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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 51

DETROIT INTERNATIONAL BRIDGE COMPANY,
APPELLANT,

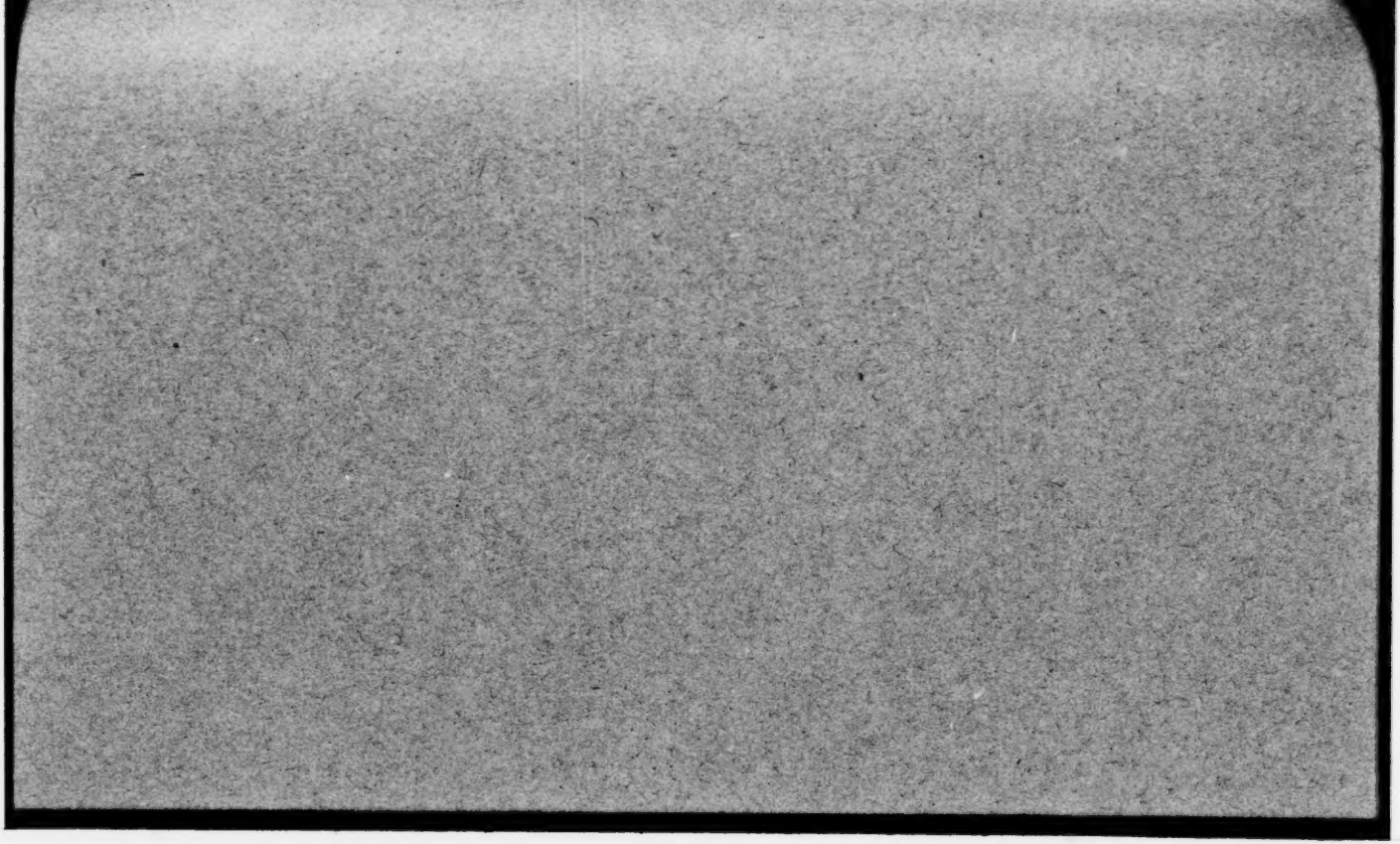
vs.

CORPORATION TAX APPEAL BOARD OF THE
STATE OF MICHIGAN

APPEAL FROM THE SUPREME COURT OF THE STATE OF
MICHIGAN

FILED MAY 2, 1932

(36,722)



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IN SUPREME COURT OF MICHIGAN

35912

Parties

In the Matter of THE DETROIT INTERNATIONAL BRIDGE Company, a Corporation Organized and Existing under the Laws of the State of Michigan; Detroit International Bridge Company, Appellant

Plaintiff's attorneys: Paul W. Voorhies, Paul G. Eger.
Defendant's attorneys: Stevenson, Butzel, Eaman & Long.

Appeal from Corporation Tax Appeal Board.

DOCKET ENTRIES

Date	Proceedings
1931.	
June 24.	Application for leave to appeal filed.
" 25.	Application for leave to appeal granted.
" 26.	Application with endorsement transmitted to Board.
July 18.	Proof of service of appeal filed.
Aug. 29.	Note of argument filed.
Sept. 11.	Return filed.
Oct. 3.	Stipulation re right to do business in New York filed.
" 28.	Argued and submitted.
1932.	
Jan. 4.	Opinion filed.
Feb. 23.	Motion for rehearing submitted.
Mar. 3.	Motion for rehearing denied.
Apr. 5.	Judgment entered.
" 5.	Petition for leave to appeal to U. S. Supreme Court filed.
" 5.	Petition granted.

[fol. 1] IN SUPREME COURT OF MICHIGAN

No. —

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

FULL NOTICE OF APPEAL

1. The petitioner and appellant above named hereby appeals from the determination of the Corporation Tax Appeal Board entered in this cause on June 4th, 1931, in the computation of the 1929 annual privilege fee, whereby it is determined that the privilege fee for the year 1929 owing by the appellant to the State of Michigan is Three Thousand Dollars ($3,000.00), this determination by the Corporation Tax Appeal Board having been made upon an appeal to it from the determination of the Secretary of State. The appellant also appeals from the determination of the Corporation Tax Appeal Board entered in this cause on June 9th, 1931, in the computation of the 1930 annual privilege fee, whereby it is determined that the privilege fee for the year 1930 owing by the appellant to the State of Michigan is Two Thousand Nine Hundred Thirty-five and 95/100 Dollars ($2,935.95). Both determinations by the Tax Appeal Board are being consolidated in this one appeal since all the questions involved, with one exception, are identical.

2. Petition for leave to appeal in the nature of a petition [fol. 2] for writ of certiorari is attached hereto and made a part hereof, and is supported by a Memorandum Brief. The entire record and file before the Corporation Tax Appeal Board is to be incorporated in the record on appeal more specifically as follows:

(a) 1929 amended annual report of Detroit Internatinal Bridge Company.

(b) 1930 annual report of Detroit International Bridge Company.

(c) The determination of the Secretary of State of the 1929 privilege fee dated June 25th, 1930.

(d) The determination of the Secretary of State of the 1930 privilege fee dated June 4th, 1931.

(e) Notice of appeal of 1929 fee to the Corporation Tax Appeal Board dated June 27th, 1930.

(f) Notice of appeal of 1930 fee to the Corporation Tax Appeal Board dated June 8th, 1931.

(g) Affidavit of officers of the Detroit International Bridge Company, re nature of certain items of intangibles filed with the Secretary of State and Corporation Tax Appeal Board.

(h) Certificate and order from the Corporation Tax Appeal Board certifying to the Secretary of State its computation of the 1929 tax dated June 4th, 1931.

(i) Certificate and order from the Corporation Tax Appeal Board certifying to the Secretary of State its computation of the 1930 tax dated June 9th, 1931.

3. The appellant has copies or the originals of these documents and will require no papers from the respondents in order to make up the record on appeal.

4. Appellant prays that said order and determination of [fol. 3] the Corporation Tax Appeal Board be reversed, and that the computation of the 1929 and 1930 privilege taxes be made in accordance with the annual reports for those years as filed by the Detroit International Bridge Company.

Said Corporation Tax Appeal Board erred in its computation of the 1929 tax as a matter of law, holding that all of the intangible items allocated without the State of Michigan by the Detroit International Bridge Company were to be allocated as being within the State of Michigan for the purpose of the computation of the tax.

Said Corporation Tax Appeal Board erred in its computation of the 1930 tax as a matter of law, holding that all of the intangible items allocated without the State of Michigan by the Detroit International Bridge Company were to be allocated as being within the State of Michigan for the purpose of the computation of the tax, and in further holding that the entire bridge structure, consisting of land, buildings (bridge structure), equipment, franchises, rights, etc., were not to be excluded in the computation of the tax, although, as appellant contends, said structure and other items is property exclusively used in interstate and international commerce, and should be excluded from the com-

putation under the provisions of Act. No. 85 of the Public Acts of 1921, Section 5, as amended by Act No. 175 of the Public Acts of 1929. Said Corporation Tax Appeal Board further erred in including said bridge structure in the computation of the 1930 privilege fee, in that by so doing it illegally imposed a tax upon the doing of interstate and international commerce by the appellant in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, and denies to petitioner the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

[fol. 4] Said Corporation Tax Appeal Board further erred in holding that the Detroit International Bridge Company was subject to the 1930 privilege fee in that said Detroit International Bridge Company was organized for the sole purpose of engaging in foreign commerce; that at December 31st, 1929, and continuously thereafter it has devoted itself exclusively to the doing of foreign commerce, having no other corporate powers, so that to impose a privilege fee upon this corporation would be wrongfully imposing a tax upon the doing of foreign commerce in violation of Article 1, Section 8, Clause 3, of the Constitution of the United States.

Stevenson, Butzel, Eaman & Long, Attorneys for Appellant.

Business address: 2288 First Nat'l Bank Bldg., Detroit, Michigan.

Dated June 23, 1931.

IN SUPREME COURT OF MICHIGAN

No. —

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

PETITION FOR LEAVE TO APPEAL (IN THE NATURE OF A PETITION FOR WRIT OF CERTIORARI)—Filed June 23, 1931

To the Honorable Judges of the Supreme Court for the State of Michigan:

Your petitioner, Detroit International Bridge Company, respectfully shows unto this court as follows:

[fol. 5]

I

That your petitioner, Detroit International Bridge Company, is a corporation organized and existing under the laws of the State of Michigan, having been organized under the provisions of Act No. 84 of the Public Acts of 1921, as amended, on June 20th, 1927, with its principal office being located in the City of Detroit, Michigan.

II

Article III of the Articles of Association of the Detroit International Bridge Company, as amended, provides that—

"The purpose or purposes of this corporation are as follows:

To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto;

To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The other corporate powers are merely incidental to the primary purpose of a highway bridge company across the Detroit River from Detroit, Michigan, to Sandwich, Ontario, Canada.

The petitioner, Detroit International Bridge Company, is now and has continuously since October, 1929, itself operated the bridge for vehicular and pedestrian traffic across the Detroit River from Detroit, Michigan, to Canada, the entire structure and appurtenances thereto being used and operated by the petitioner exclusively in foreign commerce.

[fol. 6]

III

Your petitioner further shows that permission and authority for the construction of this bridge was granted by an Act of Congress of the United States of America, approved March 4th, 1921, entitled "An Act to Authorize the Construction and Maintenance of a bridge across the Detroit River Within or near the City limits of Detroit, Michigan," which act was adopted in accordance with the provisions of the Act of Congress entitled "An Act to

Regulate the Construction of Bridges over Navigable Waters" approved March 23rd, 1906. Petitioner further shows that this act was amended and the time for the completion of the construction of this bridge was extended from time to time by Acts of Congress approved April 17th, 1924, March 3rd, 1925, and May 13th, 1926, your petitioner having by purchase acquired the rights and franchises of the American Transit Company, to which company these franchises for the construction of the bridge were originally granted.

Your petitioner further shows that the Canadian Transit Company, a subsidiary of your petitioner, which owns and operates the Canadian portion of the bridge structure, was granted permission and authority to construct the bridge on the Canadian side by an Act of Parliament of the Dominion of Canada, assented to May 3rd, 1921, and amended from time to time, having finally received approval of the Governor General of Canada on March 31st, 1927.

IV

Petitioner further shows that in accordance with the provisions of Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, that it filed its annual report for 1929 with the Secretary of State for the [fol. 7] State of Michigan in due course in September of 1929, and that at a later date, namely May 22nd, 1930, in accordance with the suggestions of the Secretary of State an amended annual report for the year 1929 was filed, a copy of which is attached hereto and made a part hereof designated "Exhibit 1", with the same force and effect as though set out at full length herein, your petitioner having paid the Secretary of State at the time of filing in September the sum of $12.00, $10.00 to cover the minimum privilege fee and $2.00 to cover the filing fee.

V

Your petitioner further shows that on June 25th, 1930, after a number of conferences, the Secretary of State determined the privilege fee to be Three Thousand Dollars ($3,000.00), a copy of such letter of determination being attached hereto designated "Exhibit 2" and made a part hereof, in which determination said Secretary of State,

contrary to the proper rule of law, allocated as being within Michigan, for the purpose of computation, items of intangibles, which will be more particularly hereinafter described, which were allocated by your petitioner as being without the State of Michigan, having been used in and acquired from the conduct of its business out of the State of Michigan.

VI

On June 27th, 1930, your petitioner being aggrieved by the assessment and the determination of the said privilege fee by the Secretary of State and believing in good faith that such assessment could not be justified, appealed therefrom to the Corporation Tax Appeal Board pursuant to and in accordance with the provisions of Section 9 of Act [fol. 8] No. 85 of the Public Acts of 1921, as amended, a copy of the letter and notice of appeal to said Board being attached hereto designated "Exhibit 3" and made a part hereof with the same force and effect as though set out at full length herein.

VII

That the matter having come on for hearing before said Corporation Tax Appeal Board on August 11th, 1930, your petitioner, by its counsel, presented the facts, filed affidavits of officers of the petitioner, submitted its contentions and cited law in support thereof why the assessment and the determination of the privilege fee should be over-ruled and annulled. On June 4th, 1931, said Corporation Tax Appeal Board rendered its decision confirming the assessment and determination made by the Secretary of State requiring the petitioner to pay the privilege fee in the sum of Three Thousand Dollars ($3,000.00) for the year 1929, the certificate of determination of the Corporation Tax Appeal Board, designated "Exhibit 4", being attached hereto and made a part hereof with the same force and effect as though set out at full length herein.

VIII

Your petitioner further avers that on September 2nd, 1930, it filed with the Secretary of State for the State of Michigan its annual report containing the information from which the franchise fee of corporations is computed, show-

ing its condition at the close of business on December 31, 1929, upon forms prescribed by the Secretary of State pursuant to and in accordance with the Public Acts of 1921, as amended, a copy of said 1930 report being attached hereto designated "Exhibit 5", and made a part hereof with the same force and effect as though set out at full length herein, [fol. 9] and that at the time of the filing of the said 1930 annual report your petitioner paid unto the Secretary of State the sum of $147.92, $145.92 covering the fee as computed by your petitioner on the basis of said annual report and $2.00 to cover the filing fee.

IX

Said Secretary of State withheld a determination of the 1930 tax because all of the items in dispute, except one, were identical to those to be determined under the 1929 privilege tax by the Corporation Tax Appeal Board, but that after the determination of the said Board on the 1929 tax, said Secretary of State determined the 1930 privilege tax of your petitioner to be Twenty-nine Hundred Thirty-five and 95/100 Dollars ($2,935.95), a copy of said letter of determination being attached hereto designated "Exhibit 6" with the same force and effect as though set out at full length herein.

X

On June 8th, 1931, your petitioner being aggrieved by the assessment and the determination of the said privilege fee by the Secretary of State and believing in good faith that such assessment could not be justified appealed therefrom to the Corporation Tax Appeal Board pursuant to and in accordance with the provisions of Section 9, of Act. No. 85 of the Public Acts of 1921, as amended, a copy of the letter and notice of appeal to said Board being attached hereto designated "Exhibit 7" and made a part hereof with the same force and effect as though set out at full length herein.

XI

That the matter was brought on for hearing before said Corporation Tax Appeal Board on June 9th, 1931, the [fol. 10] previous affidavits of the petitioner as to the nature of the intangibles being accepted as filed for the 1930 computation. On June 9th, 1931, said Corporation Tax Appeal

Board rendered its decision confirming the assessment and determination made by the Secretary of State requiring the petitioner to pay the privilege fee in the sum of Twenty-nine Hundred Thirty-five and 95/100 Dollars ($2,935.95) for the year 1930, the certificate of determination of the Corporation Tax Appeal Board, designated "Exhibit 8", being attached hereto and made a part hereof with the same force and effect as though set out at full length herein.

XII

Your petitioner respectfully shows that it was aggrieved by the determination of the Secretary of State and the Corporation Tax Appeal Board and submits that said determination of the privilege fee for the years 1929 and 1930 is erroneous and illegal and without warrant and not in accord with the law and facts here controlling, in the following particulars:

(a) In allocating the item of cash, including cash on special deposit in the amount of $5,673,155.71 as being within the State of Michigan, rather than without the State of Michigan, as your petitioner submitted and set forth in its annual report, in the computation of the 1929 privilege fee, said item of intangibles having been owned, used and acquired from the conduct of petitioner's business out of the State.

(b) In allocating the item of cash in the amount of $44.124.15 and cash on special deposit in the amount of $1,768,920.81, making a total of cash, including cash on special deposit, of $1,813,044.96 as being within the State of Michigan, rather than without the State of Michigan, as your petitioner submitted and set forth in its annual report, in the computation of the 1930 privilege fee, said item of [fol. 11] intangibles having been owned, used and acquired from the conduct of petitioner's business out of the State.

(c) In allocating the item of investments in the amount of $1,304,630.70 as being within the State of Michigan, rather than without the State of Michigan, as your petitioner submitted and set forth in its annual report in the computation of the 1929 privilege fee, said item of intangibles having been owned, used and acquired from the conduct of petitioner's business out of the State.

(d) In allocating the item of investments in the amount of $2,471,610.63 as being within the State of Michigan, rather than without the State of Michigan, as your petitioner submitted and set forth in its annual report in the computation of the 1930 privilege fee, said item of intangibles having been owned, used and acquired from the conduct of petitioner's business out of the State.

(e) In allocating the item of unamortized discount and expense on funded debt in the amount of $1,234,217.19 as being within the State of Michigan in the computation of the 1929 tax, which was not used in the computation by petitioner at all, and in allocating another $1,000.00 as being within the State of Michigan under the item of unamortized discount which your petitioner allocated as being without the State of Michigan, said items of intangibles if to be used in the computation at all are referable to business done by your peititoner during the financing of the bridge company exclusively out of the State of Michigan, to wit, New York City.

(f) In allocating the item of unamortized discount and expense on funded debt in the amount of $1,053,458.98 as being within the State of Michigan in the computation of the 1930 privilege fee instead of being without the State [fol. 12] of Michigan as submitted by your petitioner in its annual report, said item of intangibles if to be used in the computation at all being referable to business done by your petitioner during the financing of the bridge company exclusively out of the State of Michigan, to wit, New York City.

(g) In including the value of the bridge structure, including lands, buildings, fixtures, equipment, franchises and rights in the amounts of $10,661,674.26 in the computation of the 1930 privilege fee, when in fact said bridge structure and all of the other foregoing items consist of property which is used exclusively in interstate and foreign commerce.

(h) In holding that the bridge company was subject to the privilege tax for 1930 at all in that it was on December 31st, 1929, and has been continuously thereafter engaged exclusively in foreign commerce.

(i) In determining the privilege fee of petitioner for the year of 1929 to be $3,000.00

(j) In determining the privilege fee of petitioner for the year of 1930 to be $2,935.95.

XIII

All of the items of intangibles in dispute in the computation of both the 1929 and 1930 taxes were either owned, used or acquired from the conduct of petitioner's business without the State of Michigan:

A

Cash, Including Cash on Special Deposit

Item 1 of the 1929 annual report being cash, including cash on special deposit in the amount of $5,673,155.71 was allocated as being without the State of Michigan by the petitioner. This item was explained in the affidavit designated "Exhibit 9", attached hereto and made a part hereof, [fol. 13] and should be summarized as follows: The principal amount of cash in item 1 is cash on special deposit held in New York City by the New York Trust Company as Trustee under the joint first mortgage of the petitioner and the Canadian Transit Company securing bonds of those companies under a $12,000,000.00 bond issue and as Trustee under a Trust Mortgage securing an $8,000,000.00 debenture issue, both bearing the date of August 1, 1927. This amount of the special deposit of the Trustee represents the balance of cash of the $20,000,000.00, the other moneys having been used to pay for the property and the portion of the bridge structure completed at December preceding the filing of the annual report. A portion of this balance with the Trustee was to be used at a later date for payment of the remaining cost of the construction of the bridge. A substantial portion of these funds during the period of construction was to be used in payment of interest due upon the mortgage bonds and debentures of the petitioner, amounting to a sum well over $1,900,000.00 during the periods here in question. Under an agreement the Trustee had exclusive control of the funds and was authorized and did over a period of two years herein question loan these moneys on call to individuals and corpora-

tions located and doing business in New York, and invested these moneys in securities permitted under the terms of the two Trust Indentures. On page 24 of the Mortgage Trust Indenture it is provided:

"That the 'deposited cash' shall be held by the Trustee as part of the property subject to the lien of this Indenture, and for the further securtiy of the holders of Bonds issued hereunder."

And further that

"part or all of the deposited cash pending its withdrawal [fol. 14] hereunder shall be invested by the Trustee in one or more of the following classes of securities or loans (1) United States government obligations maturing within three years after such investment therein; (2) interest bearing certificates of deposit of any bank and/or trust company satisfactory to the Trustee and/or of the Trustee; (3) obligations of any state of the United States of America on the North American continent maturing within three years from the date of investment of the deposited cash therein; (4) obligations of any municipality having a population of at least one million in any of such states, provided such obligations mature within three years from the date of the investment of the deposited cash therein; (5) loans maturing within twelve months from the date of making secured by pledge of readily marketable securities listed on the New York Stock Exchange, provided that the margin for such loans shall be at least as great as that then demanded by the loan department of the Trustee in respect of loans made upon similar collateral."

And further that

"All securities and loans shall, until otherwise dealt with as hereinafter provided, constitute part of the trust estate herein created for the security of the Bonds at any time outstanding hereunder."

A similiar provision appears in the Trust Agreement securing the $8,000,000.00 debentures on pages 7 and 8.

After completion of the bridge and upon the filing of satisfactory certificates of the Engineer and opinion of counsel for the banks, the Trustee had the authority to pay

[fol. 15] to the petitioner the sum of $150,000.00 only and the balance of these funds remaining to be applied by the Trustee to the payment of the bonds or gold debentures and/or as an addition to the sinking fund securing said bond and/or debenture issue. See pages 35 and 36 of the Mortgage Indenture and pages 22 and 23 of the Debenture Issue.

This item of cash, including the special deposit with the Trustee, is a part of the $20,000,000.00 raised by the petitioner under its original financing under a contract with Hemphill, Noyes & Co. and Peabody, Houghteling & Co., Inc., as bankers at New York City, all of the bonds and debentures having been sold without the State of Michigan, a greater portion having been sold in New York City, New York State.

In the 1930 item number 1, being cash in the amount of $44,124.15 and item number 11 being special deposits with the Trustee, in the amount of $1,768,920.81, allocated by the petitioner as being without the State of Michigan are identical in nature to the foregoing items hereinabove described. These funds were out of the control of the Bridge Company completely on December 31st, 1928, and December 31st, 1929, respectively, having been exclusively used and employed by the Trustee in the City of New York in New York investments and transactions.

B

Notes and Accounts Receivable

Items of Notes and Accounts Receivable in both the years 1929 and 1930 in the annual reports are sufficiently detailed in the affidavit of the officer of the petitioner filed with the Corporation Tax Appeal Board and attached hereto designated "Exhibit 9".

[fol. 16]

C

Investments

One Million Two Hundred Eighty Thousand Dollars ($1,280,000.00) of item 5 in the annual report for 1929 being investments in the amount of $1,304,630.70 and item 5 in the 1930 report being investments in the amount of $2,471,610.63 consists of the stock of the Canadian Transit

Company organized under the laws of Canada, this item being more particularly described on pages 5 and 6 of the affidavit attached hereto marked "Exhibit 9" and filed before the Corporation Tax Appeal Board. This item for the year 1930 is considerably greater than it was for the year 1929 because under the 1930 report it represented the completed structure and paid in capital of the Canadian Transit Company as of December 31st, 1929, this amount having been increased over the year preceding.

The Canadian Transit Company is a company organized under the laws of Canada, and does no business in Michigan whatsoever. The Canadian Company owns the Canadian portion of the Ambassador Bridge and the property upon which it is situated. It also owns the Franchise of Charter granted by the Dominion of Canada which could in no wise be acquired by an American Company or an American citizen, but will be granted only to a Canadian or British subject or Company. The moneys borrowed by the Canadian Transit Company were employed exclusively in constructing the Canadian portion of the Bridge. The stock of the Company was acquired by the Michigan Company, solely for the purpose of assuring uniformity of operation of the Bridge as a unit. Simultaneously upon the acquisition of the stock by the Michigan Company, the joint mortgage issue hereinbefore mentioned, was ex- [fol. 17] ecuted and the stock was deposited and pledged with the New York Trust Company as Trustee, to secure payment of the mortgage bonds and of the debentures; attention being called to the Deposit agreement executed under date of August 1st, 1927, wherein the Trustee retaind control of this stock during the period of the bonded and debenture indebtedness.

The operations are exclusively in Canada, the property owned by the Canadian Transit Company is located solely in Canada and the Charter granted to the Canadian Company could be granted only to a Canadian Company and not to the principal Corporation Detroit International Bridge Company.

D

Unamortized Discounts and Expense on Funded Debt

Item 11 of unamortized discount and expense on funded debt in both the 1929 and 1930 reports is described on

pages 7 and 8 of the affidavit attached hereto designated "Exhibit 9" and made a part hereof.

XIV

Your petitioner therefore contends that said determination by the Secretary of State and the Corporation Tax Appeal Board in the computation of the privilege fee for the years 1929 and 1930 is erroneous and illegal for the reasons following:

(a) The statute provides that in computing the privilege fee "said computaion shall be made upon the corporation's property, both tangible and intangible, *owned* or *used* in Michigan * * * provided that in determining the amount of value of intangible property, including capital investments, owned or used in this state by either a [fol. 18] domestic or foreign corporation, such property shall be considered to be located, owned or used in this state for the purpose hereof, if used in or acquired from the conduct of its business in this state *irrespective of the domicile* of the corporation." The construction of the taxing statute Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, by the Secretary of State and the Corporation Tax Appeal Board allocating all of the items of intangibles which were neither owned or used or acquired in or from the conduct of its business in the State of Michigan, but rather which were owned, used or acquired in or from the conduct of business of the petitioner without the State of Michigan, is improvident and improper and contrary to law.

(b) The Secretary of State and the Corporation Tax Appeal Board erred in including the item of the bridge structure and all appurtenances thereto, together with the franchise and rights, in the computation of the 1930 privilege fee. Act No. 85 of the Public Acts of 1921, as amended by Act No. 175, Section 5, of the Public Acts of 1929, provides that "none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce, shall in any case enter into the computation of the net amount of the authorized capital, or the capital and surplus, as the case may be, upon which the computation of the privilege fees shall be made." In view

of the fact that the bridge structure and its appurtenances are used by the petitioner exclusively in interstate and foreign commerce, the construction of the Secretary of State and the Corporation Tax Appeal Board is improvident and improper in including such item in the computation of the tax.

(c) Said Secretary of State and Corporation Tax Appeal Board further erred in including said bridge struc- [fol. 19] ture and appurtenances thereto in the computation of the 1930 privilege fee, in that by so doing it illegally imposed a tax upon the doing of interstate and foreign commerce by the appellant in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

(d) Said Secretary of State and Corporation Tax Appeal Board further erred in including said bridge structure and appurtenances thereto in the computation of the 1930 privilege fee in that by so doing it denied unto the petitioner the equal protection of the law guaranteed to it under the Fourteenth Amendment to the Constitution of the United States.

(e) Said Corporation Tax Appeal Board further erred in holding that the Detroit International Bridge Company was subject to the 1930 privilege fee in that said Detroit International Bridge Company as organized for the sole purpose of engaging in foreign commerce; that at December 31st, 1929, and continuously thereafter, it has devoted itself exclusively to the doing of foreign commerce, having no other corporate powers, so that to impose a privilege fee upon this corporation would be wrongfully imposing a tax upon the doing of foreign commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

XV

The bridge structure was not entirely completed nor opened until the fall of 1928, and, therefore, was not in that period being used exclusively in interstate and foreign commerce. Petitioner waived its claim to have this item excluded in the computation of the 1929 tax, based upon the petitioner's condition as of December 31st, 1928,

although it is respectfully submitted that this item of the bridge structure in the 1930 report, as is hereinabove set [fol. 20] forth, should be excluded from the computation of the 1930 tax since during that period, and continuously, thereafter, said structure has been and is now being used exclusively in interstate and foreign commerce.

XVI

Your petitioner respectfully submits that the determination by this Court of the questions here raised in issue is necessary to properly ascertain your petitioner's rights.

Wherefore your petitioner prays that leave to appeal in the nature of a Writ of Certiorari may be issued out of and under the seal of the Supreme Court of Michigan directed to the Corporation Tax Appeal Board and to Paul W. Voorhies, Attorney General, Howard C. Lawrence, State Treasurer, and Oramel B. Fuller, Auditor General, constituting said Corporation Tax Appeal Board, to review and reverse the order of the said Appeal Board, and of said Secretary of State, and that all proceedings under said order of the Appeal Board and said determination of the Secretary of State, in the computation of both the 1929 and 1930 privilege fee of petitioner, be thereby stayed in accordance with law until the final decision of this Court in the case.

Detroit International Bridge Company, by Joseph A. Bower, its President. Detroit International Bridge Company. Incorporated Michigan, 1927. Stevenson, Butzel, Eaman & Long, 2288 First Nat'l Bank Bldg., Detroit, Michigan, Attorneys for Plaintiff.

[fols. 21 & 22] *Duly sworn to by Joseph A. Bower. Jurat omitted in printing.*

[fol. 23] EXHIBIT 1 TO PETITION

1929 Amended Annual Report of Detroit International Bridge Company

Take notice:

It is required by statute that two originals of this report be forwarded to the Secretary of State. Please note instruction page before proceeding.

August 31st is the last day for filing reports without penalty.

Michigan Annual Report

To be filed by every corporation for profit, whether domestic or foreign.

(Name of Corporation:) Detroit International Bridge Company.

(Postoffice address:) Detroit, Michigan.

(Street and No.:) 730 21st Street.

John S. Haggerty, Secretary of State, Lansing, Michigan.

SIR: In accordance with the provisions of Act No. 84, Public Acts of 1921, as amended, the undersigned officers of the above named company submit the following report of its condition on the 31st day of December, 1928, (Do not change this date) or (Date:) —— (close of fiscal year) or the date of incorporation during this year.

1. The place or places at which the corporation's business has been engaged during the year is Detroit, Mich.

2. Where incorporated: (State:) Michigan. Date of incorporation: June 21, 1927. (Michigan.) Date admitted: ——. (Foreign.)

[fol. 24] 3. The following are the officers and directors of the corporation:

Names of officers	Post Office addresses
I. A. Bower, President	100 Broadway, New York City, N. Y.
J. L. Fozard	730 21st St., Detroit, Mich.
J. W. Austin, Vice-President	Dime Bank Bldg., Detroit, Mich.
Sherman D. Callender, Secretary	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Asst. Secretary	100 Broadway, New York City, N. Y.
Sherman D. Callender, Treasurer	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Asst. Treasurer	100 Broadway, New York City, N. Y.
Harry Robinson, Asst. Treasurer	100 Broadway, New York City, N. Y.

Names of directors	Post Office addresses
J. A. Bower	As above.
J. W. Austin	As above.
Sherman D. Callender	As above.
David Graham	As above.
Alfred A. Cook	20 Pine St., New York City, N. Y.
Alfred C. Dent	63 Wall St., New York City, N. Y.
Jansen Noyes	15 Broad Street, New York City, N. Y.

4. Capital stock:

	Authorized	Issued	Stock subscribed but not issued	Par value per share
Common				
Preferred	$5,000,000.00	$1,100,000.00		$100.00
Amount				
Common Non-Par.	100,000 shares	100,000 shares	— shares	

5. The following is a true statement of the assets and liabilities from the books and records of the corporation, showing the condition at the date stated, and segregated to show for the purpose of computing this tax, the nature, location and value of all property owned by the corporation both in and without Michigan, itemized as follows:

Assets	Amount	In Michigan	Without Michigan
1. Cash, Including Cash on Special Deposit		$1,069.65	$5,673,155.71
2. Notes and Accounts receivable			
Less reserve for bad debts			7,781.52
[fol. 25]			
3. Deferred payment notes, contracts, etc.	$		
* Less reserve for deferred profits			
4. Inventories (To include raw materials, work in process, finished goods, supplies, etc.):			
5. Investments			1,304,630.70
6. Loans			
7. Deferred charges:			
Prepaid insurance, taxes, etc.			
8. Capital assets:			
Land and Bridge under Construction	$9,031,300.90		
Machinery and equipment			
Furniture and Fixtures	524.70		
Delivery equipment			
Automobile	1,434.00		
Total	$9,033,259.60		
Less reserve for depreciation and depletion		$9,033,259.60	
9. Patents (To include copyrights, trade-marks, etc.).			

10. Good-will			
11. Other Assets (Describe fully):			
** Working Advances	$2,626.45		
Unamortized Discount and Expense on Funded Debt	1,234,217.19		
		1,626.45	1,000.00
12. Total Assets		$9,035,955.70	$6,986,567.93

[fol. 26]

6. Liabilities.

13. Notes and Accounts Payable		$1,508,422.08	
14. Accrued expenses (Interest)		557,818.74	
15. Other Liabilities (describe fully)			
First Mortgage Bonds	$5,990,500.00		
Debentures	8,000,000.00		
		13,990,500.00	
16. Capital Stock:			
Preferred stock (less stock in treasury)	$1,100,000.00		
Common stock (less stock in treasury)			
Non-par stock (No. of shares)	100,000.00	1,200,000.00	
17. Surplus and undivided profits:			
(Enter deficit in red)			
Total Liabilities		$17,256,740.82	

* For record purposes only.

** This is a bookkeeping item and does not represent an asset which should enter into the computation of tax.

7. Property exclusively used in interstate commerce: ——, $—.

(This applies to railway equipment, tank cars, steamboats, etc., when so used in interstate commerce.)

[fol. 27] 8. The amount of capital stock paid in: (a) In cash (See Answer to Question 8 below); (b) in property (See Answer to Question 8 below). (Good-will, patents, formulas, etc., or any intangible for which stock has been issued, are considered property.)

No par value stock: Book value per share (See Answer to Question 8 below); Price fixed by corporation for sale of (See Answer to Question 8 below).

Answer to Question 8

The original capitalization of the company was 1,000 shares with no par value, for the sale of which a price of $1.00 per share was fixed; subsequently the authorized capital was increased in 100,000 shares of common stock without par value and 50,000 shares of preferred stock having a par value of $100.00 a share. The additional 99,000 common shares and 11,000 preferred shares were issued as set forth in an affidavit filed with the Secretary of State at the time. A copy of this affidavit is attached hereto and made a part hereof.

Rider to Question 5, Subds. 8 and 12

The capital asset, "Land and Bridge under Construction," and the liability, "Notes and accounts payable" appear on the books of the corporation as $9,469,729.68 and $1,946,950.86, respectively. The difference of $438,428.78 represents that portion of certain expenditures made in connection with the construction of the Bridge property allocable to the Canadian side of the Bridge and forming part of the cost of that side. Only the American [fol. 28] side of the Bridge is owned by the corporation, the Canadian side being owned by The Canadian Transit Company, a Canadian company. These expenditures were made by the corporation, but no allocation of them was made until after the filing of the original report. Consequently the total expenditures appeared on the books of the corporation as forming part of the cost of the Amer-

ican side of the Bridge, whereas $438,428.78 of those expenditures formed part of the cost of the Canadian side. Accordingly, in this amended report, the book value of the American side has been reduced by that figure. A large part of the item "Notes and Accounts Payable" is owing The Canadian Transit Company. The liability of the corporation to The Canadian Transit Company having been reduced by expenditures of $438,428.78 made for its account, the liabilities reported in this amended report have been decreased by that figure also.

STATE OF NEW YORK,
County of New York, ss:

Joseph A. Bower, J. L. Fozard, and Frances M. Bradford, being duly sworn, on oath depose and say that they are three of the stockholders of Detroit International Bridge Company, a Michigan corporation, and that the following described property, viz:

All of the property and assets of Detroit Bridge Corporation, a Delaware corporation, and substantially all of the property and assets (except certain contracts) of American Transit Company, a Nevada corporation, including all rights of American Transit Company to con- [fol. 29] struct, maintain and operate a bridge and the approaches thereto across the Detroit River from the City of Detroit, Michigan, to a point near Windsor, Province of Ontario, Dominion of Canada, granted by Act of Congress of the United States of America approved March 4, 1921, as amended by Acts of Congress approved April 7, 1924, March 3, 1925, and May 13, 1926, and all rights of American Transit Company under the permit for the construction and operation of said bridge granted by the Secretary of War of the United States of America under date of May 3, 1927, and by the Chief of Engineers of the United States Army under date of May 4, 1927, and all of the outstanding shares, except directors' qualifying shares, of The Canadian Transit Company, a corporation organized under special act of the Parliament of Canada, and the amendments thereto, to build, maintain and operate a bridge across the Detroit River from at or near Windsor in the Province of Ontario, to Detroit, Michigan, and to unite with any company organized under the laws

of the State of Michigan, in financing, controlling, building, working, maintaining and using said bridge, terminals and approaches, and all agreements and contracts for the financing, constructing, maintaining and operating the bridge to be known as the Detroit International Bridge across the Detroit River from Detroit to the town of Sandwhich in the Province of Ontario,

has been actually transferred to Detroit International Bridge Company, a Michigan corporation, in consideration of the payment of not exceeding $900,000.00 in cash [fol. 30] and the issuance and delivery of $1,100,000 7% preferred capital stock of said Bridge Company and 99,000 full paid and non-assessable shares without nominal or par value of the common capital stock of said Bridge Company and certain agreements of indemnity executed by said Bridge Company.

The value of the above described property is in excess of said sum of $900,000.00 in cash and of the aggregate par value, to wit $1,100,000, of said preferred stock, but it is impracticable at the present time to determine with any degree of certainty the amount of such excess, so as to fix the value of said property, but when such amount is determined, which it is estimated will be shortly after the formal opening of the Detroit International Bridge for public traffic, an affidavit supplemental hereto, fixing the value of such excess, will be filed.

And further deponents say not.

(Sgd.) Joseph A. Bower, (Sgd.) J. L. Fozard, (Sgd.) Frances M. Radford.

Subscribed and sworn to before me this August 30, 1927. (Sgd.) Frederick G. Brown, Notary Public, Richmond County. Certificate filed in N. Y. Co. No. 1083. N. Y. Co. Register's No. 9779. (Notarial Seal.)

[fol. 31] 9. The nature and kind of the business in which the corporation has been engaged during the year: Construction of a Bridge between Michigan and Canada.

The foregoing is a true statement of the condition of the corporation as of Dec. 31, 1928, or (Date:) —— (Close of

fiscal year), or the date of incorporation during this year.

Witness our Signatures:

"Joseph A. Bower," President. "David Graham," Asst. Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, Joseph A. Bower, do solemnly swear that I am the president or vice-president, or secretary or assistant secretary, of the above named corporation, and that the matters set forth in the foregoing report are true and correct to the best of my knowledge and belief.

"Joseph A. Bower" (Official Signature).

Subscribed and sworn to before me this 13th day of May, 1930. "Frederick G. Brown," Notary Public. Notary Public, Richmond County. Certificate filed in New York Co. My commission expires March 30, 1931.

Instructions

1. The privilege fee is based upon property value, therefore no deduction should be made from listed assets other [fols. 32-35] than reasonable reserves which are necessary to reduce them to net worth.

2. If this report is at variance with your books in any respect, or if any deviation has been made from book entries, kindly attach a statement of explanation.

3. Do not submit reports as of any other date than Dec. 31, or close of fiscal year.

4. Do not have report signed by others than President or Vice-President, and Secretary or Acting Secretary.

5. Two dollars filing fee must accompany report, together with privilege fee based upon paid-up capital and surplus (2½ mills on the dollar). One check covering fees acceptable.

6. Foreign corporations may compute privilege fee upon that portion of its paid-up capital stock and surplus represented in the ratio the Michigan property bears to the entire property.

7. Do not deduct from paid-up capital in computing privilege fee. (The statute forbids it.)

8. Please see that your report is properly attested.

Tentative computation of privilege fee as made by corporation: $——.
(Do not fill in space below.)

Foreign Corporations.—Fee as Computed by Secretary of State

Percentage	$....	filing fee.
Paid-up capital	....	on capital stock.
Surplus	....	on surplus.
Total	....	
Difference	....	due state.
	....	due corporation.

Filed, 1929, with Secretary of State.
Approved and accepted 1929.

[fol. 36] EXHIBIT 5 TO PETITION

1930 Annual Report of Detroit International Bridge Company

Take notice:
It is required by statute that two originals of this report be forwarded to the Secretary of State. Please note instruction page before proceeding.
August 31st is the last day for filing reports without penalty.

Michigan Annual Report

To be filed by every corporation for profit, whether domestic or foreign.
(Name of Corporation:) Detroit International Bridge Company.
(Postoffice Address:) Detroit, Michigan.
(Street and No.:) 21st and Howard Streets.

John S. Haggerty, Secretary of State, Lansing, Michigan.

SIR: In accordance with the provisions of Act No. 84, Public Acts of 1921, as amended, the undersigned officers of the above named company submit the following report of its condition on the 31st day of December, 1929, (Do not change this date) or (Date:) —— (close of fiscal year), or the date of incorporation during this year.

1. The place or places at which the corporation's business has been engaged during the year is, Detroit, Michigan.

2. Where incorporated, (State:) Michigan. Date of incorporation: June 21, 1927. (Michigan.) Date admitted: ——. (Foreign.)

3. The following are the officers and directors of the corporation:

Names of officers	Post Office addresses
J. A. Bower, President	165 Broadway, New York, N. Y.
J. W. Austin, Vice-President	Dime Bank Bldg., Detroit, Mich.
Sherman D. Callender, Secretary	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Ass't Secretary	100 Broadway, New York, N. Y.
[fol. 37]	
Sherman D. Callender, Treasurer	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Ass't Treasurer	100 Broadway, New York, N. Y.
Harry Robinson, Ass't Treasurer	165 Broadway, New York City.

Names of directors	Post Office addresses
J. A. Bower	165 Broadway, New York, N. Y.
J. W. Austin	Dime Bank Bldg., Detroit, Mich.
Sherman D. Callender	1706 Dime Bank Bldg., Detroit, Mich.
David Graham	100 Broadway, New York, N. Y.
Alfred A. Cook	20 Pine Street, New York, N. Y.
Alfred C. Dent	165 Broadway, New York, N. Y.
Jansen Noyes	35 Wall Street, New York, N. Y.

4. Capital stock:

	Authorized	Issued	Stock subscribed but not issued	Par value per share
Common	.....	.....	.....	.....
Preferred	$5,000,000.00	$1,100,000.00	.....	$100.00
Amount	.....	.....	.....	.....
Common Non-Par.	100,000 shares	100,000 shares	— shares	.....

5. The following is a true statement of the assets and liabilities from the books and records of the corporation, showing the condition at the date stated, and segregated to show for the purpose of computing this tax, the nature, location and value of all property owned by the corporation both in and without Michigan, itemized as follows:

Assets	Amount	In Michigan	Without Michigan
1. Cash		$6,271.64	$44,124.15
2. Notes and Accounts receivable	$		
Less reserve for bad debts		2,618.66	36,072.76
3. Deferred payment notes, contracts, etc.	$		
* Less reserve for deferred profits			
4. Inventories: (To include raw materials, work in process, finished goods, supplies, etc.)			
5. Investments			2,471,610.63
6. Loans			
7. Deferred charges:			
Prepaid insurance, taxes, etc.			
8. Capital assets:			
Land	$1,948,215.69		
[fol. 38] Buildings	6,692,041.57		
Machinery and equipment			
Furniture and Fixtures	6,076.79		
Delivery equipment	22,703.84		
Franchises, Rights, etc.	2,006,677.54		
Total	$10,675,715.43		
Less reserve for depreciation and depletion	14,041.17	10,661,674.26	

9. Patents: (To include copyrights, trade-marks, etc.).	.....	.....	.....
10. Good-will	.....	.....	.....
11. Other Assets (Described fully):			
Special Deposits	$1,770,152.81	1,232.00	1,768,920.81
Working Advances	1,150.75	1,150.75	
Deferred Charges and Prepaid Items	275,071.55	275,071.55	
Unamortized Discount and Expense on Funded Debt	1,153,458.98		1,153,458.98
12. Total Assets	.....	$10,948,018.86	$5,474,187.33
6. Liabilities:			
13. Notes and Accounts Payable	.....	$826,278.24	
14. Accrued expenses (Interest)	.....	557,904.16	
15. Other Liabilities (describe fully)	.....		
6½% First Mortgage Bonds	5,989,000.00		
7% Sinking Fund Gold Debentures	8,000,000.00	13,989,000.00	
16. Capital Stock:			
Preferred stock (less stock in treasury)	$1,074,379.30		
Common stock (less stock in treasury)	.....		
Non-par stock (No. of shares 100,000)	100,000.00	1,174,379.30	
17. Surplus and undivided profits (Enter deficit in red)	.....	125,355.51	
Total Liabilities	.....	$16,422,206.19	

*For record purposes only.

7. Property exclusively used in interstate commerce. Entire Capital Assets—$10,661,674.26.

(This applies to railway equipment, tank cars, steamboats, etc., when so used in interstate commerce.)

[fol. 39] 8. The amount of capital stock paid in: (a) In cash (See Answer to Question 8 below); (b) in property (See Answer to Question 8 below). (Good-will, patents, formulas, etc., or any intangible for which stock has been issued, are considered property.)

No par value stock: Book value per share (See Answer to Question 8 below); Price fixed by corporation for sale of (See Answer to Question 8 below).

Answer to Question 8

The original capitalization of the company was 1,000 shares with no par value, for the sale of which a price of $1.00 per share was fixed; subsequently the authorized capital was increased to 100,000 shares of common stock without par value and 50,000 shares of preferred stock having a par value of $100.00 a share. The additional 99,000 common shares and 11,000 preferred shares were issued as set forth in an affidavit filed with the Secretary of State at the time. A copy of this affidavit is attached hereto and made a part hereof.

State of New York,
County of New York, ss:

Joseph A. Bower, J. L. Fozard, and Frances M. Radford, being duly sworn, on oath depose and say, that they are three of the stockholders of Detroit International Bridge Company, a Michigan Corporation and that the following described property, viz:

All of the property and assets of Detroit Bridge Corporation, a Delaware corporation, and substantially all of the property and assets (except certain contracts) of [fol. 40] American Transit Company, a Nevada corporation, including all rights of American Transit Company to construct, maintain and operate a bridge and the approaches thereto across the Detroit River from the City

of Detroit, Michigan, to a point near Windsor, Province of Ontario, Dominion of Canada, granted by Act of Congress of the United States of America approved March 4, 1921, as amended by Acts of Congress approved April 7, 1924, March 3, 1925, and May 13, 1926, and all rights of American Transit Company under the permit for the construction and operation of said bridge granted by the Secretary of War of the United States of America under date of May 3, 1927, and by the Chief of Engineers of the United States Army under date of May 4, 1927, and all of the outstanding shares, except directors' qualifying shares, of The Canadian Transit Company, a corporation organized under special act of the Parliament of Canada, and the amendments thereto, to build, maintain and operate a bridge across the Detroit River from at or near Windsor in the Province of Ontario, to Detroit, Michigan, and to unite with any company organized under the laws of the State of Michigan, in financing, controlling, building, working, maintaining and using said bridge, terminals and approaches, and all agreements and contracts for the financing, constructing, maintaining and operating the bridge to be known as the Detroit International Bridge across the Detroit River from Detroit to the town of Sandwich in the Province of Ontario,

has been actually transferred to Detroit International Bridge Company, a Michigan corporation, in consideration [fol. 41] of the payment of not exceeding $900,000.00 in cash and the issuance and delivery of $1,100,000 7 % preferred capital stock of said Bridge Company and 99,000 full paid and non-assessable shares without nominal or par value of the common capital stock of said Bridge Company and certain agreements of indemnity executed by said Bridge Company.

The value of the above described property is in excess of said sum of $900,000.00 in cash and of the aggregate par value, to wit $1,100,000, of said preferred stock, but it is impracticable at the present time to determine with any degree of certainty the amount of such excess, so as to fix the value of said property, but when such amount is determined, which it is estimated will be shortly after the formal opening of the Detroit International Bridge for

public traffic, an affidavit supplemental hereto, fixing the value of such excess, will be filed.

And further deponents say not.

(Sgd.) Joseph A. Bower, (Sgd.) J. L. Fozard, (Sgd.) Frances M. Radford.

Subscribed and sworn to before me this August 30, 1927. (Sgd.) Frederick G. Brown, Notary Public, Richmond County. Certificate filed in N. Y. Co. No. 1083. N. Y. Register's No. 9779. (Notarial Seal.)

[fol. 42] 9. The nature and kind of the business in which the corporation as of Dec. 31, 1929, or (Date.) —— (Close struction and Operation of Bridge between Detroit, Mich., and Sandwich, Ont.

The foregoing is a true statement of the condition of the corporation as of Dec. 31, 1929, or (Date.) ——(Close of fiscal year), or the date of incorporation during this year.

Witness our Signatures:

J. A. Bower, President. David Graham, Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, David Graham, do solemnly swear that I am the president or vice-president, or secretary or assistant secretary, of the above named corporation, and that the matters set forth in the foregoing report are true and correct to the best of my knowledge and belief.

David Graham (Official Signature).

Subscribed and sworn to before me this 28th day of August, 1930. Frederick G. Brown, Notary Public. Notary Public, Richmond County. Certificate filed in New York Co. My commission expires March 31, 1931.

Instructions

1. The privilege fee is based upon property value, therefore no deduction should be made from listed assets other

than reasonable reserves which are necessary to reduce them to net worth.

[fol. 43] 2. If this report is at variance with your books in any respect, or if any deviation has been made from book entries, kindly attach a statement of explanation.

3. Do not submit reports as of any other date than Dec. 31, or close of fiscal year.

4. Do not have report signed by others than President or Vice-President, and Secretary or Acting Secretary.

5. Two dollars filing fee must accompany report, together with privilege fee based upon paid-up capital and surplus (2½ mills on the dollar). One check covering fees acceptable.

6. Foreign corporations may compute privilege fee upon that portion of its paid-up capital stock and surplus represented in the ratio the Michigan property bears to the entire property.

7. Do not deduct from paid-up capital in computing privilege fee. (The statute forbids it.)

8. Please see that your report is properly attested.

Tentative computation of privilege fee as made by corporation: $——.
(Do not fill in space below.)

Foreign Corporations.—Fee as Computed by Secretary of State

Percentage	$....	filing fee.
Paid-up capital	....	on capital stock.
Surplus	....	on surplus.
Total	....	
Difference	....	due state.
		due corporation.

Filed, 1930, with Secretary of State.
Approved and accepted, 1930.

3—51

[fol. 44] EXHIBIT 6 TO PETITION

The Determination of the Secretary of State of the 1930 Privilege Fee

Department of State, Lansing

AEA:GC, Corporation

June 4th, 1931.

Stevenson, Butzel, Eaman & Long, First National Bank Building, Detroit, Michigan.

Re Detroit International Bridge Company 1929 privilege tax

GENTLEMEN: The Tax Appeal Board has rendered its decision in connection with the above matter and we are enclosing a copy of the order.

The total privilege fee in this case amounted to $3,000.00 together with the $2.00 filing fee. $12.00 was submitted by the corporation which leaves a balance due of $2,990.00.

The annual privilege tax computed on the basis of the 1929 report by locating the intangibles of this corporation in Michigan amounted to $2,935.95, together with $2.00 filing fee. $147.92 was submitted which leaves a balance due of $2,790.03.

May we ask that you give this matter prompt attention and send in the balance due the State without further delay.

Respectfully, (Sgd.) Frank D. Fitzgerald, Secretary of State.

[fol. 45] EXHIBIT 7 TO PETITION

Notice of Appeal of 1930 Fee to the Corporation Tax Appeal Board

June 8, 1931

Honorable Paul W. Voorhies, Attorney General, Chairman of the Tax Appeal Board, Lansing, Michigan.

Re Detroit International Bridge Company 1930 privilege tax

DEAR SIR: We received a communication yesterday morning from Honorable Frank D. Fitzgerald, Secretary of State for the State of Michigan, determining the amount of the privilege fee said to be due under the 1930 report.

This communication is intended to serve as notice to you and to the Tax Appeal Board that the Detroit International Bridge Company conceives itself aggrieved as to the amount of such fee based upon the facts and desires a determination thereof by the Tax Appeal Board in the manner provided by the laws of the State of Michigan.

We are enclosing herewith our check in your favor in the amount of $10.00 as payment of the statutory appeal fee. With one exception the question raised in the computation of the 1930 tax involves the proper allocation of intangible items ruled upon in the appeal to your board of the 1929 annual report.

We have just received the ruling of the appeal board on [fol. 46] the 1929 tax adverse to the Bridge Company. The same ruling will undoubtedly be made in reference to the 1930 tax in respect to these items. The one item not involved in the 1929 tax but raised in the 1930 tax is the question of whether or not the Bridge Company has correctly deducted that portion of its property, being the bridge construction and property from the computation as being used exclusively in interstate and international commerce. The Secretary of State has had an informal ruling from the Attorney General's office on this question.

The Bridge Company will waive the formality of a hearing and submit the question on memorandum to the Tax Appeal Board so that both the 1929 and 1930 annual taxes can be appealed to the Supreme Court in one proceeding.

May we have your acknowledgment accordingly.

Yours very truly, Stevenson, Butzel, Eaman & Long.

21/IMP.
(Encs.)

[fol. 47] EXHIBIT 8 TO PETITION

Certificate and Order from the Corporation Tax Appeal Board Certifying to the Secretary of State Its Computation of the 1930 Tax

STATE OF MICHIGAN:

In re Appeal of Detroit International Bridge Company

At a meeting of the Corporation Tax Appeal Board held at the office of the Attorney General June 9th, 1931, the Ap-

peal of the Detroit International Bridge Company was considered.

From all facts and evidence presented it is the opinion of this Board that the Secretary of State is correct in assuming that intangible personal property consisting of cash, notes and accounts receivable, investments, special deposits and unamortized discount and expense on funded debt is property located within Michigan for the purpose of determining the privilege tax.

We hereby certify to the Secretary of State the following computation of the privilege tax for the year 1930:

Paid up capital—$1,174,379.30 @ 2½ mills—$2,935.95 Total Privilege fee.

(Sgd.) Paul K. Voorheis, Attorney General, Chairman, by Emerson R. Boyles, Deputy. (Sgd.) Howard C. Lawrence, State Treasurer, by O. F. Beamer, Deputy. (Sgd.) Oramel B. Fuller, Auditor General.

Dated this 9th day of June, A. D. 1931.

[fol. 48] EXHIBIT 9 TO PETITION

Affidavit Filed with Corporation Tax Appeal Board Explaining Items of Intangibles in the 1929 Report

BEFORE THE TAX APPEAL BOARD, STATE OF MICHIGAN

In the Matter of the Appeal of DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan Corporation

STATE OF NEW YORK,
County of New York, ss:

Joseph A. Bower, being duly sworn, deposes and says: That he is the President of Detroit International Bridge Company, a Michigan corporation, the appellant in this proceeding; that he signed and verified the original and the amended annual report of Detroit International Bridge Company for the year 1929, and has knowledge of the statements therein made; that annexed hereto is a statement in explanation of certain items listed in said report which items the Secretary of State in computing the privilege fee

based upon said report has treated as being located within Michigan; that deponent is familiar with the facts set forth in the annexed statement and that they truly set forth the nature of said items; and deponent respectfully submits, upon the advice of counsel, that the treatment of said items by the Secretary of State and his computation of the privilege fee based upon said report are contrary to law.

Joseph A. Bower.

Sworn to before me this 14th day of July, 1930. Samuel Black, Notary Public, Queens County, No. 3328. Queens County Register's Office, 9904. Certificate filed in N. Y. County No. 1424. N. Y. County Register's Office No. 2-B-924. Certificate filed in King's County No. 354. King's County Register's Office No. 2589. (Notarial Seal.)

[fol. 49] No. 33443, Series C

State of New York,
County of New York, ss:

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, do hereby certify, That said Court is a Court of Record, having by law a seal; that Samuel Black, whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a notary public acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Queens with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 14th day of July, 1930.

Daniel E. Finn, Clerk. (Notarial Seal.)

[fol. 50] Explanation of Certain Items Listed on Page 2 of Annual Report of Detroit International Bridge Company for 1929

Cash, Including Cash on Special Deposit

This item, the total of which is $5,673,155.71, represents three different funds.

The first, amounting to $52,041.60, is an account of the Bridge Company in a New York bank. Moneys in this account can be withdrawn only by officers of the Bridge Company permanently located in New York City. The account is incidental to the business of the Bridge Company transacted from the office of its President in New York City. Withdrawals are made to defray expenses incurred in transactions taking place in Michigan or in New York as the case may be. The moneys in the account on and prior to December 31, 1928, did not arise from business carried on in Michigan as the Bridge was not in operation until November 15, 1929, but consisted of funds turned over to the Bridge Company at its New York office by the Trustee under the Joint First Mortgage and the Trust Agreement hereinafter mentioned. The funds were either a part of the cash held by the Trustee as security for the bonds and debentures hereinafter mentioned, or constituted interest upon that cash.

The second fund, amounting to $5,620,356.40, is held by The New York Trust Company, a trust company organized under the laws of the State of New York and having its place of business in New York City, as Trustee under the Joint First Mortgage of Detroit International Bridge Company and The Canadian Transit Company, securing bonds of those companies, and as Trustee under the Trust Agreement of Detroit International Bridge Company, [fol. 51] securing debentures of that company. The bonds secured by the Joint First Mortgage and the debentures secured by the Trust Agreement were issued to bankers for cash in August, 1927. The amount in question is the balance of that cash. The cash was immediately deposited with the

Trustee pursuant to the terms of the Joint First Mortgage and the Trust Agreement to be held as security for the bonds and debentures. The Trustee, being authorized so to do by the provisions of the Joint First Mortgage and the Trust Agreement, has loaned this cash on call to individuals and corporations located and doing business in New York. It can be obtained by the Bridge Company only to reimburse it for expenditures made or indebtedness incurred on account of the cost of construction of the Bridge. Until such reimbursement it is held by the Trustee as security for the bonds and debentures, and the Bridge Company cannot use the funds in its business. The Trustee has control of the funds pursuant to the provisions of the Joint First Mortgage and the Trust Agreement until the Bridge Company submits to its appropriate certificates of its officers and engineers and opinions of counsel proving its rights to reimburse as aforesaid. This cash on special deposit, therefore, is not being used in, and was not derived from, the conduct of the business of the Bridge Company in Michigan. It is being used as collateral security for the bonds and debentures or for the purpose of making loans on call, or both, and in any case it is being used in New York. Its only connection with Michigan is that it is anticipated that, upon compliance with certain conditions, the money will be used to reimburse the Bridge Company for the cost of construction of the Bridge. It is to be noted, furthermore, that the Joint First Mortgage and the Trust Agreement define cost of construction as including interest upon the bonds and [fol. 52] debentures until the completion of the Bridge which was expected to be August 1, 1930. The interest payable after December 31, 1928, to and including August 1, 1930, amounts to $1,900,000 and is payable at the offices of the Trustee in New York City. Consequently of the $5,621,-114.11, none of which originated in or was derived from Michigan or ever held there, at least $1,900,000 was or will be disbursed for interest in New York and will not even be used to reimburse the Bridge Company for expenditures made or indebtedness incurred in Michigan.

The third fund, amounting to $755.71, is held by the Trustee in the sinking fund created by the Joint First Mortgage. With money obtained from the Trustee the Bridge Company purchased property in Detroit which was subjected to the lien of the Joint First Mortgage. Subse-

quently this property was sold for $20,000 and the proceeds of sale were deposited in the sinking fund as required by the provisions of the Mortgage. The Mortgage provides that all moneys paid into the sinking fund shall be used to purchase or retire outstanding bonds. Pursuant to this provision all of the $20,000, with the exception of $755.71, has been so used. The amount of $755.71 must be held by the Trustee as security for the bonds and can be disposed of only to purchase or retire bonds. In no event can it be turned over to the Bridge Company.

Notes and Accounts Receivable

The item of $7,781.52 arises as follows. Under the contract for the construction of the Bridge the contractors are required to pay certain city and county property taxes during the period of construction. The Bridge Company paid such taxes in the amount of $7,781.52 (the money with which [fol. 53] to make such payment having been derived from the cash on special deposit with the Trustee as aforesaid) and the contractors are, therefore, liable to the Bridge Company in that amount. The contractors are McClintic-Marshall Company, a Pennsylvania corporation having its principal office and place of business in Pittsburgh. On and prior to December 31, 1928, the books of the Bridge Company were kept in New York City. During the same period practically all transactions between the Bridge Company and the contractors were handled in New York City. The contract for the construction of the Bridge was signed in New York and the negotiations relating thereto took place in New York.

Investments

The item of investments, the total of which is $1,304,630.70, consists of stock of The Canadian Transit Company of the value of $1,280,000 and of stock of Detroit International Bridge Company itself of the value of $24,630.70.

The Canadian Transit Company is a company organized under the laws of the Dominion of Canada and it does no business in Michigan. It is the owner of that part of the Ambassador Bridge situated in Canada. In August, 1927, the Bridge Company acquired the stock of The Canadian Transit Company by a transfer in New York City for

a consideration, none of which was acquired from the conduct of its business in Michigan, the consideration being the agreement of the Bridge Company out of the proceeds of the sale of its debentures to make payment for the account of The Canadian Transit Company of such sum as shall be necessary, in excess of one-half of the proceeds of the sale of the bonds jointly issued by both companies, to complete the part of the Bridge located in Canada. The [fol. 54] debentures were sold in New York as above explained so that the proceeds of sale were not derived from Michigan, and, of course, the part of the proceeds needed to pay for the stock were expended in Canada to construct the Canadian portion of the Bridge. At practically the same time that the stock was acquired, it was pledged with The New York Trust Company, as Trustee, to secure the payment of debentures and it remains in New York in the possession of the Trustee. Voting power remains in the Bridge Company. The stock, therefore, is being used only in Canada and in New York; in Canada, since it is by means of the voting power of the stock that the Bridge Company controls the operations of the Canadian side of the Bridge; in New York, since the stock is pledged as collateral security in that state for a loan effected in that state.

The stock of Detroit International Bridge Company which the Bridge Company holds consists of treasury shares. When the Bridge Company in August, 1927, acquired the assets of American Transit Company, the stockholders of the latter Company became entitled to receive shares of stock of the Bridge Company. Some of these shares of the value of $24,630.70 were bought back by the Bridge Company. The stock certificates representing this investment have always been kept in New York City. The money by means of which these shares were repurchased was raised by the Bridge Company in New York City.

Working Advances

This item totals $2,626.45 and the part located in Michigan was by mistake originally reported as $1,500. The correct figures are $1,626.45 within Michigan and $1,000 without Michigan. The amount without Michigan consists

[fol. 55] of a bank account in Canada subject to check by a Vice-President of the Bridge Company in payment of expenses incurred in Canada in connection with the construction of the Canadian side of the Bridge.

Unamortized Discount and Expense on Funded Debt

When the bonds and debentures of the Bridge Company were sold to the bankers in August, 1927, the Bridge Company did not receive in payment the face value of these obligations, but they were purchased by the bankers at a discount, and the Bridge Company incurred and paid certain expenses in connection with the sale. This discount and expense are represented by the above item. It is treated as an asset by the Bridge Company upon its balance sheet in accordance with sound accounting practice, and it will be reduced each year by a certain amount for a period of twenty-five years, since the bonds and debentures mature in twenty-five years. The theory upon which accountants proceed in sanctioning this practice is that since the item is a payment for the use of money over a long period it is fair that the burden of the payment should be spread over the entire period and not charged entirely to the year in which it was made. In fact and in law, however, it does not represent an asset or property at all. To treat it as an asset for tax purposes would mean that, although in fact the Bridge Company has received less than the face value of the bonds and debentures, it is being taxed as though it had received their entire face value.

If the item is to be treated as property, it should be considered, it is submitted, as being property "without Michigan." At the time the item was created the Bridge Company was in process of organization and preparation [fol. 56] for commencement of business. It had not yet started to construct and operate the Bridge. The item in question arose in connection with the financing of the Bridge. That financing took place entirely in New York City. The Discount and Expense in fact did not represent a payment of any kind by the Bridge Company to the bankers so that it cannot be said that the item reflects cash or any other property of the Bridge Company which was ever located in Michigan or used or derived from the con-

duct of business in Michigan. Even if the item is deemed to represent a payment of cash by the Bridge Company to the bankers by way of a commission, that cash was derived from the bankers in New York and the payment was made in the course of financing, all of which was done in New York. If the item be considered as a prepayment in the nature of interest, it is submitted that its situs is New York, because (a) the original financing took place in New York so that the prepayment was made from New York funds not acquired in Michigan, (b) the bonds and coupons are payable only in New York and Canada, and (c) the money with which to pay them enters into the computation of the tax as other assets. The item, treating it as an asset, was not derived from the conduct of the business of the Bridge Company in Michigan and is not used in the conduct of that business.

[fol. 57] IN SUPREME COURT OF MICHIGAN

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

NOTICE OF ALLOWANCE OF APPEAL

To Stevenson, Butzel, Eaman and Long, First National Bank Bldg., Detroit, Michigan, Attorneys for Detroit International Bridge Company, Appellant:

You are hereby notified that the Supreme Court has allowed your appeal in the above entitled cause from the determination of the Corporation Tax Appeal Board.

This notice is given to you pursuant to rule 60, section 2.

Paul W. Voorhies, Attorney General; Howard C. Lawrence, State Treasurer; Oramel B. Fuller, Auditor General, Comprising the Corporation Tax Appeal Board, by Paul G. Eger, Assistant Attorney General.

Dated July 13, 1931.

[fol. 58] IN SUPREME COURT OF MICHIGAN

DETROIT INTERNATIONAL BRIDGE COMPANY, Plaintiff and Appellant,

vs.

CORPORATION TAX APPEAL BOARD, Defendant and Appellee

NOTICE OF APPEARANCE TO FULL NOTICE APPEAL AND RETURN OF CORPORATION TAX APPEAL BOARD

I

The Corporation Tax Appeal Board, defendant and appellee, hereby appears in this appeal by Paul W. Voorhies, Attorney General.

II

The following additional portions of the record and files are to be incorporated in the record on appeal:

"A." Original 1929 annual report of Detroit International Bridge Company.

"B." Receipt issued for fee of $12.00 received in payment of privilege and filing fee on 1929 report of Detroit International Bridge Company.

"C." Opinion by Attorney General.

"D." Letter from Secretary of State to Detroit International Bridge Company dated January 30, 1930, disallowing claim of plaintiff.

[fol. 59] "E." Letter from Detroit International Bridge Company to Secretary of State dated May 1st, 1930, suggesting they file an amended report.

"F." Petition of Appeal from the decision of the Secretary of State dated July 1, 1930, filed by plaintiff with the Tax Appeal Board.

"G." Receipt issued for fee of $147.92 received in payment of privilege and filing fee on 1930 report of Detroit International Bridge Company.

III

Now comes the Corporation Tax Appeal Board, defendant and appellee, and in obedience to the appeal allowed

by the Supreme Court (in the nature of a writ of certiorari) sets forth as follows:

That the Detroit International Bridge Company, the petitioner herein, is and has been since June 21, 1927, a corporation for profit organized under the laws of the State of Michigan for a period of thirty years with its principal place of business in Detroit, Michigan.

That on or about September 7, 1929, petitioner tendered to the Secretary of State an annual report, a true copy of which is attached to and made a part of this record and marked defendant's Exhibit "A", accompanied by fees in amount of $12.00 representing the statutory filing fee of $2.00 and $10.00 minimum privilege fee, receipt for which was issued by defendant September 7, 1929, a true copy of which is attached to and made a part of this record and marked defendant's Exhibit "B". Under paragraph seven of said report an exemption was claimed for lands and structures used in construction and forming part of [fol. 60] the bridge under construction between Michigan and Canada in amount of $9,469,729.68. This entire property value was located in Michigan and by its exemption, the minimum privilege fee became payable.

That the Secretary of State acting under the advice of, and supported by an opinion of the Attorney General, a true copy of which is attached hereto and made a part of this return and marked defendant's Exhibit "C", disallowed the claims of plaintiff as hereinbefore recited, and so advised said plaintiff under date of January 30, 1930, copy of which is attached hereto and marked defendant's Exhibit "D".

That on May the first, plaintiff suggested it file an amended report a true copy of said communication is attached hereto and marked defendant's Exhibit "E".

That on May 16, 1930, said amended annual report was filed in the office of Secretary of State, a copy of which forms a part of this record and designated plaintiff's Exhibit "1".

That the Secretary of State disallowed the claims of plaintiff as to allocation of its intangibles outside of Michigan and proceeded to locate such intangibles in Michigan for the purpose of computing the privilege fee. Said plaintiff was advised by defendant under date of June 25, 1930, a true copy of said communication forms a part of

this record and designated plaintiff's Exhibit "2", that the privilege fee as determined by said Secretary of State amounted to $3,000.00.

That on June 27, 1930, Notice of Appeal, which forms a part of this record, marked plaintiff's Exhibit "3", was filed by plaintiff from the decision of the Secretary of State as aforesaid with the Corporation Tax Appeal Board. Said appeal was based upon grounds of location of intangibles all of which is more fully and specifically set forth in plaintiff's petition of appeal, a true copy of which [fol. 61] is attached and marked defendant's Exhibit "F".

That thereafter a hearing was duly had upon said appeal by the Corporation Tax Appeal Board after due notice to the parties who were represented at such hearing by counsel, the said Board did on the 4th day of June, 1931, enter an order in words and figures as follows:

That the Secretary of State was correct in holding that intangible personal property is properly located within Michigan for the purpose of determining the privilege tax and the decision of the Secretary of State is hereby affirmed and that we hereby certify to the Secretary of State the following computation of the privilege fee for the year 1929.

Paid-up capital $1,200,000.00 at 2½ mills—$3,000.00

A true copy of said order forms a part of this record marked plaintiff's Exhibit "4".

That on September 2, 1930, plaintiff filed with the Secretary of State its annual report for the year 1930 pursuant to and in accordance with Act 85, Public Acts of 1921, as amended. A copy of said 1930 report forms a part of this record and designated plaintiff's Exhibit "5".

That said report was accompanied by fees in amount of $147.92; $2.00 of which represented the statutory filing fee and $145.92 as privilege fee. The Secretary of State issued his receipt for the amounts hereinbefore stated, a copy of which is attached hereto and marked defendant's Exhibit "G".

That the determination of the privilege fee by the Secretary of State based on the 1930 annual report was withheld pending the decision of the 1929 issue before the Tax [fol. 62] Appeal Board, and that after the determination of

said Board on the 1929 tax, the Secretary of State determined the 1930 privilege tax of plaintiff to be $2,935.95, a copy of said letter of determination forms a part of this record and designated plaintiff's Exhibit "6".

That on June 8th, 1931, the plaintiff appealed from the decision of Secreary of State as aforesaid to the Corporation Tax Appeal Board upon various grounds, all of which is more fully and specifically set forth in plaintiff's notice of appeal, a true copy of which forms a part of this record and marked plaintiff's Exhibit "7".

That thereafter a hearing was duly had upon said appeal by the Corporation Tax Appeal Board and upon due consideration thereof the said Board did on the 9th day of June, 1931, enter an order confirming the assessment and determination by the Secretary of State, requiring the plaintiff to pay the privilege fee in the sum of $2,935.95 for the year 1930. The certificate of determination of the Corporation Tax Appeal Board forms a part of this record and is designated plaintiff's Exhibit "8".

(Signed) Paul W. Voorheis, Attorney General and Chairman of the Corporation Tax Appeal Board. (Signed) Paul W. Voorheis, Attorney General. (Signed) Paul G. Eger, Assistant Attorney General. (Signed) Alice E. Alexander, of Counsel, State Capitol, Lansing, Michigan.

July 17, 1931.

[fol. 63] UNITED STATES OF AMERICA,
The State of Michigan,
Department of State:

To all to whom these presents shall come:

I, Frank D. Fitzgerald, Secretary of State of the State of Michigan and Custodian of the Great Seal thereof, Do Hereby Certify that the annexed copy of annual report of the Detroit International Bridge Company for the year 1929; receipt for twelve Dollars dated September 7, 1929, issued by the Secretary of State to the Detroit International Bridge Company; letter dated January 27, 1930, from the Attorney General to the Secretary of State; letter dated January 30, 1930, from the Secretary of State to the Detroit International Bridge Company; letter dated May 1, 1930,

from Stevenson, Butzel, Eaman & Long to the Secretary of State; affidavit of Joseph A. Bower, President of Detroit International Bridge Company, and receipt for one hundred forty-seven and ninety-two hundredths dollars dated September 6, 1930, issued by the Secretary of State to the Detroit International Bridge Company have been compared by me with the record on file in this Department and that the same is a true copy thereof and the whole of such record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Lansing, this Seventeenth day of July, A. D. 1931.

Frank D. Fitzgerald, Secretary of State. The Great Seal of the State of Michigan. A. D. MDCCCXXXV.

[fol. 64] EXHIBIT "A" TO APPEARANCE AND RETURN

Original 1929 Annual Report of Detroit International Bridge Company

Take notice:

It is required by statute that two originals of this report be forwarded to the Secretary of State. Please note instruction page before proceeding.

August 31st is the last day for filing reports without penalty.

Michigan Annual Report

To be filed by every corporation for profit, whether domestic or foreign.

(Name of Corporation:) Detroit International Bridge Company.

(Postoffice Address:) Detroit, Michigan.

(Street and No.:) 730 21st Street.

John S. Haggerty, Secretary of State, Lansing, Michigan.

SIR: In accordance with the provisions of Act No. 84, Public Acts of 1921, as amended, the undersigned officers of the above named company submit the following report of its condition on the 31st day of December (Do not change this date) or (Date:) —— (close of fiscal year), or the date of incorporation during this year.

1. The place or places at which the corporation's business has been engaged during the year is Detroit, Mich.

2. Where incorporated: (State:) Michigan. Date of incorporation: June 21, 1927. (Michigan.) Date admitted: ——. (Foreign.)

3. The following are the officers and directors of the corporation:

Names of Officers	Post Office Addresses
J. A. Bower, President	100 Broadway, New York City, N. Y.
J. L. Fozard	730 21st Sta., Detroit, Mich.
J. W. Austin, Vice-President	Dime Bank Bldg., Detroit, Mich.
Sherman D. Callender, Secretary	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Asst. Secretary	100 Broadway, New York City, N. Y.
[fol. 65]	
Sherman D. Callender, Treasurer	1706 Dime Bank Bldg., Detroit, Mich.
David Graham, Asst. Treasurer	100 Broadway, New York City, N. Y.
Harry Robinson, Asst. Treasurer	100 Broadway, New York City, N. Y.

Names of Directors	Post Office Addresses
J. A. Bower	As above.
J. W. Austin	As above.
Sherman D. Callender	As above.
David Graham	As above.
Alfred A. Cook	20 Pine St., New York City, N. Y.
Alfred C. Dent	63 Wall St., New York City, N. Y.
Jansen Noyes	15 Broad Street, New York City, N. Y.

4. Capital stock:

	Authorized	Issued	Stock subscribed but not issued	Par value per share
Common				
Preferred	$5,000,000.00	$1,100,000.00		$100.00
Amount				
Common Non-Par.	100,000 shares	100,000 shares	— shares	

5. The following is a true statement of the assets and liabilities from the books and records of the corporation, showing the condition at the date stated, and segregated to show for the purpose of computing this tax, the nature, location and value of all property owned by the corporation both in and without Michigan, itemized as follows:

Assets	Amount	In Michigan	Without Michigan
1. Cash, including Cash on Special Deposit		$1,069.65	$5,673,155.71
2. Notes and Accounts receivable			
Less reserve for bad debts			7,781.52
3. Deferred payment notes, contracts, etc.			
* Less reserve for deferred profits			
4. Inventories: (To include raw materials, work in process, finished goods, supplies, etc.)			
5. Investments			1,304,630.70
6. Loans			
7. Deferred charges:			
Prepaid insurances, taxes, etc.			
8. Capital assets:			
Land and Bridge Under Construction	$9,469,729.68		
[fol. 66]			
Machinery and Equipment			
Furniture and Fixtures	524.70		
Delivery Equipment			
Automobile	1,434.00		
Total	$9,471,688.38		
Less reserve for depreciation and depletion		9,471,688.38	
9. Patents: (To include copyrights, trade-marks, etc.)			
10. Good-will			

11. Other Assets (describe fully):			
Working Advances	$2,626.45		
** Unamortized Discount and Expense on Funded Debt	1,234,217.19		
		1,500.00	1,235,343.64
12. Total Assets		$9,474,258.03	$8,220,911.57
6. Liabilities:			
13. Notes and Accounts Payable		$1,946,850.86	
14. Accrued expenses (Interest)		557,818.74	
15. Other Liabilities (describe fully)			
First Mortgage Bonds	5,990,500.00		
Debentures	8,000,000.00	13,990,500.00	
16. Capital Stock:			
Preferred stock (less stock in treasury)	$1,100,000.00		
Common stock (less stock in treasury)			
Non-par stock (No. of shares.....)	100,000.00	1,200,000.00	
17. Surplus and undivided profits (Enter deficit in red)			
Total Liabilities		$17,695,169.60	

* For record purposes only.

** This is a bookkeeping item and does not represent anasset which should enter into the computation of tax.

7. Property exclusively used in interstate commerce. Lands and structures used in construction and forming part of bridge under construction between Michigan and Canada—$9,469,729.68.

(This applies to railway equipment, tank cars, steamboats, etc., when so used in interstate commerce)

[fol. 67] 8. The amount of capital stock paid in: (a) In cash (See Answer to Question 8 below); (b) in property (See Answer to Question 8 below). (God-will, patents, formulas, etc., or any intangible for which stock has been issued, are considered property.)

No par value stock: Book value per share (See Answer to Question 8 below); Price fixed by corporation for sale of (See Answer to Question 8 below).

Answer to Question 8

The original capitalization of the company was 1,000 shares with no par value, for the sale of which a price of $1.00 per share was fixed; subsequently the authorized capital was increased to 100,000 shares of common stock without par value and 50,000 shares of preferred stock having a par value of $100.00 a share. The additional 99,000 common shares and 11,000 preferred shares were issued as set forth in an affidavit filed with the Secretary of State at the time. A copy of this affidavit is attached hereto and made a part hereof.

State of New York,
County of New York, ss:

Joseph A. Bower, J. L. Fozard, and Frances M. Radford, being duly sworn, on oath depose and say that they are three of the stockholders of Detroit International Bridge Company, a Michigan corporation, and that the following described property, viz:

All of the property and assets of Detroit Bridge Corporation, a Delaware corporation, and substantially all of the [fol. 68] property and assets (except certain contracts) of American Transit Company, a Nevada corporation, including all rights of American Transit Company to construct,

maintain and operate a bridge and approaches thereto across the Detroit River from the City of Detroit, Michigan, to a point near Windsor, Province of Ontario, Dominion of Canada, granted by Act of Congress of the United States of America approved March 4, 1921, as amended by Acts of Congress approved April 7, 1924, March 3, 1925, and May 13, 1926, and all rights of American Transit Company under the permit for the construction and operation of said bridge granted by the Secretary of War of the United States of America under date of May 3, 1927, and by the Chief of Engineers of the United States Army under date of May 4, 1927, and all of the outstanding shares, except directors' qualifying shares, of The Canadian Transit Company, a corporation organized under special act of the Parliament of Canada, and the amendments thereto, to build, maintain and operate a bridge across the Detroit River from at or near Windsor in the Province of Ontario, to Detroit, Michigan, and to unite with any company organized under the laws of the State of Michigan, in financing, controlling, building, working, maintaining and using said bridge, terminals and approaches, and all agreements and contracts for the financing, constructing, maintaining and operating the bridge to be known as the Detroit International Bridge across the Detroit River from Detroit to the town of Sandwich in the Province of Ontario,

has been actually transferred to Detroit International Bridge Company, a Michigan corporation, in consideration [fol. 69] of the payment of not exceeding $900,000.00 in cash and the issuance and delivery of $1,100,000 7% preferred capital stock of said Bridge Company and 99,000 full paid and non-assessable shares without nominal or par value of the common capital stock of said Bridge Company and certain agreements of indemnity executed by said Bridge Company.

The value of the above described property is in excess of said sum of $900,000.00 in cash and of the aggregate par value, to wit $1,100,000, of said preferred stock, but it is impracticable at the present time to determine with any degree of certainty the amount of such excess, so as to fix the value of said property, but when such amount is determined, which it is estimated will be shortly after the formal opening of the Detroit International Bridge for public traf-

fic, an affidavit supplemental hereto, fixing the value of such excess, will be filed.

And further deponents say not.

(Sgd.) Joseph A. Bower, (Sgd.) J. L. Fozard, (Sgd.) Frances M. Radford.

Subscribed and sworn to before me this August 30, 1927. (Sgd.) Frederick G. Brown, Notary Public, Richmond County. Certificate filed in N. Y. Co. No. 1083. N. Y. Co. Register's No. 9779. (Notarial Seal.)

[fol. 70] 9. The nature and kind of the business in which the corporation has been engaged during the year: Construction of a Bridge between Michigan and Canada.

The foregoing is a true statement of the condition of the corporation as of Dec. 31, 1928, or (Date:) ——, (Close of fiscal year) or the date of incorporation during this year.

Witness our Signatures:

J. A. Bower, President. David Graham, Asst. Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, J. A. Bower, do solemnly swear that I am the president or vice-president, or secretary or assistant secretary, of the above named corporation, and that the matters set forth in the foregoing report are true and correct to the best of my knowledge and belief.

J. A. Bower (Official Signature).

Subscribed and sworn to before me this 27th day of August, 1929. Samuel Black, Notary Public. Certificate filed in New York Co. My commission expires March 30, 1930. (Seal.)

Instructions

1. The privilege fee is based upon property value, therefore no deduction should be made from listed assets other than reasonable reserves which are necessary to reduce them to net worth.

[fols. 71 & 72] 2. If this report is at variance with your books in any respect, or if any deviation has been made from book entries, kindly attach a statement of explanation.

3. Do not submit reports as of any other date than Dec. 31, or close of fiscal year.

4. Do not have report signed by others than President or Vice-President, and Secretary or Acting Secretary.

5. Two dollars filing fee must accompany report, together with privilege fee based upon paid-up capital and surplus (2½ mills on the dollar). One check covering fees acceptable.

6. Foreign corporations may compute privilege fee upon that portion of its paid-up capital stock and surplus represented in the ratio the Michigan property bears to the entire property.

7. Do not deduct from paid-up capital in computing privilege fee. (The statute forbids it.)

8. Please see that your report is properly attested.

Tentative computation of privilege fee as made by corporation: $12.00.

(Do not fill in space below.)

Foreign Corporations—Fee as Computed by Secretary of State

Percentage	$....	filing fee.
Paid-up capital	....	on capital stock.
Surplus	....	on surplus.
Total	$....	
Difference	....	due state.
	$....	due corporation.

Filed Sept. 7, 1929, with Secretary of State.
Approved and accepted, 1929.

[fol. 73] EXHIBIT "C" TO APPEARANCE AND RETURN

Opinion by Attorney General

January 27, 1930

Hon. John S. Haggerty, Secretary of State, Lansing, Michigan.

Attention Mrs. Alexander, Corporation Division, re the Detroit International Bridge Company

DEAR SIR: In your letter of the 24th you state that the Detroit International Bridge Company claims that it should pay only the minimum privilege tax because its property is used exclusively in interstate commerce. This corporation is undoubtedly basing its claim upon the language used in Section 5 of Act No. 85, P. A. 1921, which reads in part:

"* * * and none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce, shall in any case enter into the computation of the net amount of the authorized capital, or the capital and surplus, as the case may be, upon which the computation of the privilege fees shall be made, * * *"

The authorities are in accord in holding that a bridge of this character is not being "used in interstate commerce."

4 R. C. L. 560.
12 C. J. 37.

The company should therefore pay its fee in accordance with the proper computation.

Very truly yours, (Signed) Wilber M. Brucker, Attorney General.

[fols. 74-79] EXHIBIT "D" TO APPEARANCE AND RETURN

Letter from Secretary of State to Detroit International Bridge Company

Corporation

January 30th, 1930.

Detroit International Bridge Company, 730 21st Street, Detroit, Michigan.

GENTLEMEN: A recent opinion by the Attorney General advises that your corporation is not entitled to exclude from

the computation of the privilege fee your entire property value upon the theory that it is used in interstate commerce.

Before making final computation of the privilege fee will you kindly advise if the Intangible property belonging to this corporation is not used in connection with Michigan business. Your report indicates all business of the corporation is conducted in Michigan while your financial statement allocates as property outside of Michigan Intangible amounting to $8,220,911.57.

Kindly favor us with a prompt reply.

Respectfully, —— ——, Secretary of State.

AEA:GC.

[fol. 80] [File endorsement omitted]

IN SUPREME COURT OF MICHIGAN

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

Before Butzel, C. J.; Wiest, Clark, McDonald, Potter, Sharpe, North, Fead, JJ.

OPINION—Filed Jan. 4, 1932

SHARPE, J.:

This case involves appeals by the Detroit International Bridge Company, a Michigan corporation, with its principal office in the city of Detroit, from the determination of the Corporation Tax Appeal Board fixing its annual privilege fees for the years 1929 and 1930.

The purposes for which the bridge company was organized are:

"To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto;

"To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The bridge is used for vehicular and pedestrian traffic across the Detroit river from Detroit to Canada. Permission and authority for its construction were granted to the bridge company by Act of Congress and to the Canadian Transit Company, which is now a subsidiary of the bridge [fol. 81] company, by an Act of Parliament of the Dominion of Canada.

The applicable sections of Act No. 85, Pub. Acts 1921, as amended by Act No. 175, Pub. Acts 1929, requiring the payment of an annual privilege fee by corporations, appear in the margin.

1. In 1929 the bridge company reported under the heading, "Cash, Including Cash on Special Deposit, in Michigan, $1,069.65; without Michigan, $5,673,155.71," and in its 1930 report, under a similar heading, cash "In Michigan, $6,271.64," and "Without Michigan, $44,124.15." In the latter report also appeared an item, "Special Deposits, $1,768,920.81."

It is the claim of the company that the amount of the items "Special Deposits" had become localized and had acquired a business situs in the State of New York. The appeal board held otherwise. Included in the item $5,673,155.71 was $52,041.60, money of the company on deposit in a New York bank. It is conceded that this sum should be included in the computation. It appears from the affidavit of the president of the company, annexed to the 1929 report, that the balance of this item was held by the New York Trust Company as trustee under a Joint First Mortgage of the bridge company and the Canadian Transit Company, securing bonds of these companies in the sum of $12,000,000, and also as trustee under a Trust Agreement of the bridge company, securing debentures of that company in the amount of $8,000,000; that these bonds and debentures were issued to bankers for cash in August, 1927; that the proceeds thereof came into the hands [fol. 82] of the trustee and the sum then in its hands was the balance thereof after such payments as had been made by it on the construction cost of the bridge; that a part of it had been loaned on call to individuals and corporations located and doing business in New York, and that the trustee was authorized so to do by the provisions in the mortgage and trust agreement; that the bridge company was entitled to it only as needed to pay the cost of construction of the bridge,

and that a substantial part of it was to be used during the period of construction in payment of interest due upon the mortgage bonds and debentures.

The item of "Special Deposits" in the 1930 report is explained in a similar manner, the amount in the hands of the trustee having been reduced to that amount.

The fee here sought to be collected is imposed upon the "paid-up capital and surplus" of the corporation "for the privilege of exercising its franchise and of transacting its business within this state," and the computation thereof in the ratio prescribed "shall be made upon the corporation's property, both tangible and intangible, owned or used in Michigan," and as provided in the amendment (Act No. 175, Pub. Acts 1929):

"In determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, such property shall be considered to be located, owned or used in this state for the purposes hereof, if used in or acquired from the conduct of its business in this state, irrespective of the domicile of the corporation."

It seems clear that the moneys in the hands of the trustee in New York is the property of the corporation, and was properly included in the computation.

[fol. 83] The contention of counsel for the bridge company that this money "had become localized and had acquired a business situs in the State of New York," if a subject for consideration in the construction to be placed upon our statute, is answered by the holding of the court in that State that the "activities" of the trustee in a similar case "are merely incidental to the corporate organization and the ownership of corporate assets and are not exercised for the purpose of continued efforts in the pursuit of profit and gain which is the test of the 'doing of business.'" People ex rel. etc. v. Knapp, 229 N. Y. 502 (syllabus).

The bonds and debentures were issued by the bridge company to secure the money with which to erect the bridge. These instruments do not appear in the record, although counsel on both sides quote from them. It will be assumed that under their provisions it was, and is, the

duty of the trustee to protect the purchasers by seeing to it that the money is expended for the purpose for which the securities were issued. But, until so expended, it belongs to the bridge company, although not subject to withdrawal from the hands of the trustee until the conditions of the trust agreement have been complied with. The purpose of its retention by the trustee was not for reinvestment. Neither could it be appropriated or set aside by the trustee for the payment of interest on the bonds or securities until such interest became due.

2. Under the heading "Investments," the 1929 report showed $1,304,630.70, and that for 1930 $2,471,610.63. These items included stock in the Canadian Transit Com-
[fol. 84] pany of the value of $1,280,000. Over objection these sums were included in the computation by the appeal board. This company was organized under the laws of the Dominion of Canada. While the title to that part of the bridge situated in Canada is held by it, all of the shares of its stock are held and owned by the Detroit International Bridge Company. It is but a subsidiary thereof. Its affairs must be conducted as a separate entity, in order that the governmental rights of that country may be protected. Its stock is on deposit by the bridge company with the trustee in New York as collateral to the bonds and debentures issued. This stock is an asset in the hands of the bridge company, and was properly included in the computation.

3. Items "Unamortized Discount and Expense on Funded Debt" of $1,234,217.19 in the 1929 report and $1,153,458.98 in that of 1930 were included in the computations by the appeal board. These items are thus explained by the president in his affidavit above referred to: When the bonds and debentures of the bridge company were sold in 1927, the face value of them was not received by the company. They were sold at a discount, and there were certain expenses connected with the sale. This discount and expense are represented by these items, and are treated upon its balance sheet as an asset to be reduced each year until the securities mature. He states:

"The theory upon which accountants proceed in sanctioning this practice is that since the item is a payment for

the use of money over a long period it is fair that the burden of the payment should be spread over the entire period and not charged entirely to the year in which it was made."

[fol. 85] These are but bookkeeping items. They do not in fact represent an asset or property of the company. Without passing upon the propriety of making such entries on its balance sheets and inserting them in its reports to the secretary of state, we are satisfied that they should not have been included in the computation of the tax.

4. It is insisted that the bridge company is not subject to the payment of any annual privilege tax; that it is limited by its charter and dedication to public use, and is engaged exclusively in foreign commerce, and that the imposition of such a tax upon it violates article 1, section 8, clause 3 of the Federal Constitution, which empowers the congress of the United States "To regulate Commerce with foreign Nations * * *."

We are impressed that in the discussion of this matter counsel lose sight of the nature of the privilege fee sought to be collected. It is not a tax upon the proceeds of the business of the corporation. It in no way involves the tolls collected from those using the bridge as a means of transportation between Detroit and Canada. It is a fee imposed by law "for the privilege of exercising its franchise and of transacting its business within this state." The distinction between such a fee and a tax upon property was clearly pointed out in Union Steam Pump Sales Co. v. State, 216 Mich. 261, and later in Re Truscon Steel Co., 246 Mich. 174, and in Re G. H. Hammond Co., 246 Mich. 179. The question presented is so clearly disposed of in Re Detroit & Windsor Ferry Co., 232 Mich. 574, that further discussion seems unnecessary.

[fol. 86] The cases relied on by counsel for the bridge company are, we think, easily distinguished. In Philadelphia and Southern Steamship Co. v. Pennsylvania, 122 U. S. 326, the tax was levied upon the gross receipts of a steamship company; in Covington etc., Bridge Co. v. Kentucky, 154 U. S. 204, the State sought to regulate the rates of fare for passage over a bridge spanning the Ohio river; in Sault Ste. Marie v. Int'l Transit Co., 234 U. S. 333, the city sought to enforce the collection of a license fee, and in Ozark Pipe

Line Corp. v. Monier, 266 U. S. 555 and in State Tax Commission v. Interstate Natural Gas Company, Inc., — U. S. — (decided November 23, 1931), the State sought to enforce a statute providing for the collection of such a tax on corporations not organized under its laws and exclusively engaged in interstate commerce.

Unless counsel can agree upon the deductions which shall be made in conformity herewith, the orders will be set aside and remand had to the board to determine the proper amount of the tax to be paid.

(Signed) Nelson Sharpe, John S. McDonald, Geo. M. Clark, William W. Potter, Walter H. North, Howard Wiest, Henry M. Butzel, Louis H. Fead.

[File endorsement omitted.]

[fol. 87] 2 Comp. Laws, 1929

"10140. Annual Privilege Fee; Profit Corporation.—Sec. 4. Every corporation organized or doing business under the laws of this state, excepting railroad companies and interurban railroad companies, and telephone and telegraph companies, express companies and foreign insurance companies shall, at the time of filing its annual report with the secretary of state of this state, as required by section five of chapter two of part five of act number eighty-four of the public acts of nineteen hundred twenty-one, for the privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state an annual fee of two and one-half mills upon each dollar of its paid-up capital and surplus, but such privilege fee shall in no case be less than ten dollars nor more than fifty thousand dollars. It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporation franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

"10143. Franchise and Privilege Fees; Method of Computation; Surplus Defined; Furnishing of Information.—Sec. 5. In the case of computing the franchise and privilege fees prescribed by sections three and four of this act, respectively, both as to domestic and foreign corporations,

such computation shall be made upon the corporation's property, both tangible and intangible, owned or used in Michigan in the ratio that such property bears to the entire property of the corporation, and such ratio shall be applied by the secretary of state to determine the amount of the authorized capital stock owned or used in Michigan, and to determine what portion of the corporations's paid-up capital and surplus, severally, are owned or used in Michigan. The term 'surplus' as used in this act, shall be taken and deemed to mean the net value of the corporation's property, less its outstanding indebtedness and paid-up capital; but in no case, either as domestic or as to foreign corporations, shall any deduction be made from the item of paid-up capital, in computing the privilege fee thereon, by reason of any impairment of the same. None of the property or capital of any corporation subject to paying the privilege fee prescribed in section four which is located without the state of Michigan, and none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce, shall in any case enter into the computation of the net amount of the authorized capital, or the capital and surplus, as the case may be, upon which the computation of the privilege fees shall be made: Provided, That in determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, such property shall be considered to be located, owned or used in this state for the purposes hereof, if used in or acquired from the conduct of its business in this state, irrespective of the [fols. 88-95] domicile of the corporation. The secretary of state shall in all such cases be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the privilege fee to be paid by such corporation. For the purpose of this act only, each share of no par value shall be deemed to have the value of at least one dollar, or such value as shall have been fixed by the corporation for the sale of such stock, or the book value as determined by the secretary of state, whichever may be the higher. In any case where the capital of a corporation is not divided into shares, the whole property thereof shall be deemed to be the authorized capital stock for the purpose of this act."

[fol. 96] IN SUPREME COURT OF MICHIGAN

35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

JUDGMENT—April 5, 1932

The record and proceedings in this cause having been removed to this Court by appeal allowed by this Court issued to the Corporation Tax Appeal Board for the State of Michigan and the matters in error assigned in said petition for appeal (in the nature of a petition for a writ of certiorari) having been seen and inspected and duly considered by the Court and it appearing to this Court that in said record and proceedings that the imposition of said privilege fee for the year of 1930 under Act No. 85 of the Public Acts of 1921 as amended by Act No. 175 of the Public Acts of 1929 insofar as applied to the plaintiff does not violate Article 1 Section 8 Clause 3 of the Constitution of the United States and it further appearing to the Court that the determination of the Corporation Tax Appeal Board of the privilege fees for the year 1929 and 1930 was without error except as to the inclusion of the item of "unamortized discount and expense on funded debt";

Therefore, it is ordered and adjudged that the determination of the Corporation Tax Appeal Board for the State of Michigan be and the same is hereby affirmed in all particulars except as to the inclusion of the item of "unamortized discount and expense on funded debt", the determination of the Corporation Tax Appeal Board on that question being reversed, the amount of the privilege fees to be paid for the years 1929 and 1930 by Detroit International Bridge Company, the plaintiff, to be in accordance with the provisions of this judgment.

[fol. 97] IN SUPREME COURT OF MICHIGAN

No. 35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 5, 1932

To the Honorable George M. Clark, Chief Justice of the Supreme Court for the State of Michigan:

Now comes Detroit International Bridge Company, plaintiff and appellant, and represents:

I

That on the 4th day of March, A. D. 1932, final judgment was duly entered in the above entitled cause by the Supreme Court for the State of Michigan, the highest court of the State of Michigan, affirming in all particulars but one a determination made by the Corporation Tax Appeal Board of the State of Michigan.

II

This action before the Supreme Court of the State of Michigan is in the nature of a certiorari proceedings to review the determination of the Corporation Tax Appeal Board of the State of Michigan, to which Board the plaintiff and appellant appealed from the computation of the Secretary of State for the State of Michigan of the annual [fol. 98] privilege fees for the years 1929 and 1930.

III

That the Detroit International Bridge Company, plaintiff and appellant, is a corporation organized under the laws of the State of Michigan, with its principal office at Detroit, Wayne County, Michigan. Article III of the Articles of Association of the Detroit International Bridge Company provides:

"The purpose or purposes of this corporation are as follows:

To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sand-

wich, Province of Ontario, Canada, and the approaches thereto;

To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The Detroit International Bridge, petitioner and appellant, has continuously since October, 1929, itself operated said bridge for vehicular and pedestrian traffic across the Detroit River from Detroit, Michigan to Canada, and has engaged exclusively in such business.

IV

In said cause there is drawn in question the validity of a statute of the State of Michigan, on the ground of its being repugnant to the Constitution, laws or treaties of the United States, and the decision is in favor of its validity. Petitioner and appellant contended that the corporation was not subject to the payment of the annual privilege fee under Act No. 85 of the Public Acts of 1921, [fol. 99] as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan because it was limited by the powers granted under its corporate charter to the carrying on of this business of foreign commerce and because it was engaged exclusively in foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foreign commerce in violation of Article I, section 8, clause 3, of the Constitution of the United States. Plaintiff and appellant, Detroit International Bridge Company, claimed and contended that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan, so far as applied to it, is unconstitutional in that it is an improper interference with and regulation of foreign commerce by the State of Michigan, and thereby violates the power of Congress, to regulate foreign commerce as provided in Article I, Section 8, Clause 3, of the Constitution of the United States.

V

Plaintiff's and appellant's claims and contentions, that said act contravenes Article I, Section 8, Clause 3, of the

Constitution of the United States in the respects and particulars aforesaid, were overruled by the Supreme Court of the State of Michigan, assignment of errors on this point having been raised in the appeal to the Supreme Court for the State of Michigan; that said question was brought and raised before the Supreme Court of the State of Michigan in the manner and form required under the practice of the said court, and which satisfied all of the requirements, and [fol. 100] the said questions were considered at length by the said Supreme Court for the State of Michigan; and that said contentions and objections of plaintiff and appellant were expressly overruled by the judgment in the opinion rendered in said Supreme Court.

VI

Your petitioner further avers that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of your petitioner, all of which more fully appear from the assignment of errors which is filed herewith.

Wherefore petitioner prays for the allowance of an appeal from the Supreme Court for the State of Michigan, the highest court of said State, to the Supreme Court of the United States in order that the decision of the Supreme Court for the State of Michigan may be examined and reversed. It also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court for the State of Michigan, may be sent to the Supreme Court of the United States as provided by law.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

Dated April 5th, 1932.

Alfred A. Cook, Alfred A. Cook, Thomas G. Long, Thomas G. Long, Victor W. Klein, Victor W. Klein, Attorneys for Petitioner and Appellant, Detroit International Bridge Company.

This is to acknowledge service of the foregoing petition.
Paul W. Voorhies, Atty. Gen., by Alice E. Alexander.

[fol. 100½] [File endorsement omitted.]

[fol. 101] IN SUPREME COURT OF MICHIGAN

No. 35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

ORDER ALLOWING APPEAL—Filed April 5, 1932

The petition of Detroit International Bridge Company for an appeal in the above cause to the Supreme Court of the United States from the supreme court of the State of Michigan, and the assignment of errors filed therewith and the record of said cause having been considered, it is

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the supreme court of the State of Michigan, as prayed in said petition, and that the clerk of the supreme court of the State of Michigan shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within thirty days from the date hereof.

It is further ordered that said Detroit International Bridge Company shall give good and sufficient security in the sum of Five Hundred Dollars ($500) that said appellant shall prosecute said appeal to effect, and if said appellant fails to make its plea good, it shall answer all costs.

Geo. M. Clark, Chief Justice of the Supreme Court of Michigan.

April 4, 1932.

This is to acknowledge service of the foregoing order.
Paul W. Voorhies, Attorney General, by Alice E. Alexander.

[fols. 101½-102½] [File endorsement omitted.]

[fols. 103-108½] Bond on appeal for $500.00 omitted in printing.

[fol. 109] IN SUPREME COURT OF MICHIGAN

No. 35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

ASSIGNMENT OF ERRORS—Filed April 5, 1932

Now comes Detroit International Bridge Company, petitioner and plaintiff, in error by Alfred A. Cook, Thomas G. Long and Victor W. Klein, its attorneys, and assigns the following errors in the record and proceedings in the said cause, to wit:

I

The Supreme Court of the State of Michigan erred in holding (a) that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929 of the State of Michigan (Sections 10140, 10143, 10144, and 10145 of the Compiled Laws of Michigan, 1929, inclusive) is constitutional in application to plaintiff and its business, (b) said Act, so far as applied to plaintiff, does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and (c) in applying said statute and imposing the privilege fee for the year 1930 upon plaintiff, the State of Michigan did not unduly interfere with and thereby usurp or violate the power of Congress of the United States to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States.

[fol. 110] II

The tax imposed by Section 4 of said Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929 of the State of Michigan, not being imposed on the privilege to be a corporation (such tax being imposed by Section 3 of said Act No. 85 of the Public Acts of 1921, as amended by Section 3 of Act No.

175 of the Public Acts of 1925), but being imposed on the privilege to do the business for which organized and such business of the plaintiff being solely and exclusively the maintenance and operation of an instrumentality of foreign commerce, viz., an international highway toll bridge such privilege (as distinguished from the privilege to be organized as a corporation with power to do such business if permitted by the competent authority) is not grantable by or otherwise within the competency of the State of Michigan, but is solely within the jurisdiction of Congress under Article I, Section 8, Clause 3 of the Constitution of the United States and the Supreme Court of the State of Michigan erred in not holding said Section 4 of said Act not applicable to plaintiff and its business or not valid under said provision of the United States Constitution if so applied.

By reason whereof this petitioner and plaintiff in error prays that the final decision and judgment in the Supreme Court of the State of Michigan dated March 4th, 1932 in the above entitled cause be reversed insofar as the 1930 privilege tax be affected thereby, and other appropriate action [fol. 111] be had in relation thereto.

Alfred A. Cook, Alfred A. Cook, Thomas G. Long, Thomas G. Long, Victor W. Klein, Victor W. Klein, Attorneys for Petitioner and Appellant, Detroit International Bridge Company.

Dated April 5th, 1932.

This is to acknowledge service of the foregoing assignments of error.

Paul W. Voorhies, Attorney General, by Alice E. Alexander.

[fol. 111½] [File endorsement omitted.]

[fol. 112] IN SUPREME COURT OF MICHIGAN

No. 35912

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Exiting under the Laws of the State of Michigan

Appeal of the Detroit International Bridge Company from the Determination of the Corporation Tax Appeal Board

STIPULATION DESIGNATING TRANSCRIPT TO BE FORWARD- BY CLERK TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES—Filed May 6, 1932

It is hereby stipulated by and between the parties through their respective counsel that the following portion of the record in the above entitled cause be forwarded for filing with the Clerk of the Supreme Court of the United States at Washington, D. C.:

1. The entire record before the Supreme Court of Michigan in the appeal from the Corporation Tax Appeal Board to the Supreme Court of Michigan.
2. The petition for leave to appeal to the United States of America, Supreme Court.
3. Assignments of Error.
4. Order allowing appeal to the United States Supreme Court.
5. Cost bond.
6. Stipulation designating record to be filed with the United States Supreme Court.

Alfred A. Cook, Thomas G. Long, Victor W. Klein, Attorneys for Detroit International Bridge Company, Plaintiff in Error. Paul W. Voorhies, Attorney General, Attorney for Corporation Tax Appeal Board.

Dated April 28th, 1932.

Clerk's certificate to foregoing paper omitted in printing.

[fols. 112½ & 113] [File endorsement omitted.]

[fol. 114] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS INTENDED TO BE RELIED UPON BY APPELLANT AND PARTS OF RECORD TO BE PRINTED PURSUANT TO RULE 13, SECTION 9, UNITED STATES SUPREME COURT RULES, TOGETHER WITH PROOF OF SERVICE OF SAME—Filed May 6, 1932

Detroit International Bridge Company, a Michigan corporation, appellant, in pursuance to Rule 13, Section 9, Supreme Court Rules, does hereby state that in the appeal it intends to rely upon the following points of law set forth in its two Assignments of Error, to wit:

I

That the Supreme Court of the State of Michigan erred in holding (a) that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929 of the State of Michigan (Sections 10140, 10143, 10144 and 10145 of the Compiled Laws of Michigan, 1929, inclusive), is constitutional in application to plaintiff and its business, (b) said Act, so far as applied to plaintiff, does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and (c) in applying said statute and imposing the privilege fee for the year 1930 upon plaintiff, the State of Michigan did not unduly interfere with and hereby usurp or violate the power of Congress of the United States to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States.

[fol. 115] II

That the tax imposed by Section 4 of said Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929 of the State of Michigan, not being imposed on the privilege to be a corporation (such tax being imposed by Section 3 of said Act No. 85 of the Public Acts of 1921, as amended by Section 3 of Act No. 175 of the Public Acts of 1925), but being imposed on the privilege to do the business for which organized and such business of the plaintiff being solely and exclusively the maintenance and operation of an instrumentality of foreign

commerce, viz, an international highway toll bridge such privilege (as distinguished from the privilege to be organized as a corporation with power to do such business if permitted by the competent authority) is not grantable by or otherwise within the competency of the State of Michigan, but is solely within the jurisdiction of Congress under Article I, Section 8, Clause 3 of the Constitution of the United States and the Supreme Court of the State of Michigan erred in not holding said Section 4 of said Act no- applicable to plaintiff and its business or not valid under said provision of the United States Constitution if so applied.

Appellant further states that it intends to rely upon the following portions of the record, which it thinks necessary for consideration in the determination of this case on appeal:

1. The entire record before the Supreme Court of the State of Michigan in the appeal from the Corporation Tax Appeal Board to the Supreme Court of Michigan, excepting appellant's exhibits 1, 2, 3 and 4, and excepting appellee's exhibits A, B, E, F and G.

2. The petition of the Detroit International Bridge Company filed with the Supreme Court of Michigan for leave to appeal to the United States Supreme Court.

3. Assignments of error.

4. Order allowing appeal to the United States Supreme Court.

5. Cost bond.

6. Stipulation filed with the Supreme Court of Michigan designating transcript to be forwarded by clerk to the clerk of the Supreme Court of the United States.

[fols. 116 & 116a] 7. This statement of points intended to be relied upon and designation of the parts of the record to be printed.

Alfred A. Cook, Thomas G. Long, Victor W. Klein,
Attorneys for Detroit International Bridge Company, Appellant.

Proof of Service Upon Appellee

STATE OF MICHIGAN,
County of Wayne, ss:

Victor W. Klein, being first duly sworn, deposes and says that he did on the 4th day of May, A. D. 1932, serve a true

copy of the foregoing Designation of points intended to be relied upon by appellant and parts of record to be printed pursuant to Rule 13, Section 9, United States Supreme Court Rules, together with Proof of Service of same upon the Corporation Tax Appeal Board by enclosing same in an envelope addressed Paul W. Voorhies, Attorney General, Lansing, Michigan, a member of said Corporation Tax Appeal Board, registered mail, return receipt requested, and depositing same in the Post-Office of the City of Detroit, Wayne County, Michigan, postage prepaid.

Further deponent saith not.

Victor W. Klein.

Subscribed and sworn to before me this 4th day of May, A. D. 1932. Veronica B. Walker, Notary Public, Wayne County, Michigan. My commission expires Dec. 13, 1932.

[fol. 116b] [File endorsement omitted.]

[fols. 117 & 118] In Supreme Court of the United States

Designation of Additional Parts of Record to be Printed —Filed May 19, 1932

Comes now the Corporation Tax Appeal Board, appellee in the above entitled cause, and designates the following additional parts of the record which it believes is material on the hearing of said case, and respectfully requests that the same be printed by the clerk for the hearing.

Title of paper	Record page
Appellee's "Exhibit A". Original 1929 annual report	64–71
Appellant's "Exhibit 1". Amended 1929 annual report	23–32

Paul W. Voorhies, Attorney General of the State of Michigan, Counsel for Appellee.

Dated Lansing, Michigan, May 12, 1932.

[fol. 119] [File endorsement omitted.]

Endorsed on cover: File No. 36,722. Michigan Supreme Court. Term No. 51. Detroit International Bridge Company, appellant, vs. Corporation Tax Appeal Board of the State of Michigan. Filed May 2, 1932. File No. 36,722.

(2208)

FILE COPY

Office Supreme Court
MAY 14 193
CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES

DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan corporation,
Appellant,

vs.

CORPORATION TAX APPEAL BOARD OF MICHIGAN,
Appellee.

No. 51
October Term, 1931.

STATEMENT OF DETROIT INTERNATIONAL BRIDGE COMPANY, APPELLANT, SETTING FORTH THE BASIS ON WHICH THE REVIEW OF THE JUDGMENT OF THE SUPREME COURT OF MICHIGAN IS INVOKED ON APPEAL.

ALFRED A. COOK,
THOMAS G. LONG,
VICTOR W. KLEIN,
Attorneys for Appellant,
Detroit International Bridge Company.

CONWAY-SCOTT COMPANY, LAW PRINTERS, DETROIT, MICH

IN THE

SUPREME COURT OF THE UNITED STATES

DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan corporation,
Appellant,

vs.

CORPORATION TAX APPEAL BOARD OF MICHIGAN,
Appellee.

No. 908
October Term, 1931.

STATEMENT OF DETROIT INTERNATIONAL BRIDGE COMPANY, APPELLANT, SETTING FORTH THE BASIS ON WHICH THE REVIEW OF THE JUDGMENT OF THE SUPREME COURT OF MICHIGAN IS INVOKED ON APPEAL.

(The clerk having notified counsel that the record as filed would not be available in printed form for a period of more than thirty days, all references to the record pages made herein will be found in the printed record of the case before the Michigan Supreme Court which is included in the transcript of the record filed with this Court.)

This is an appeal from the judgment entered by the Supreme Court of the State of Michigan, the court of highest jurisdiction in the State of Michigan, entered on April 5th, 1932. The application of the Detroit International Bridge Company, the appellant, for leave to appeal to the United States Supreme Court was also filed on April 5th, 1932, after the entry of the judgment. The order allowing the appeal was signed and entered by the Chief Justice of the Supreme Court of the State of Michigan on April 5th, 1932.

It is the contention of the Detroit International Bridge Company that the United States Supreme Court has jurisdiction to review on appeal the judgment entered by the Supreme Court of the State of Michigan on April 5th, 1932, under the provisions of the Judicial Code, Section 237, United States Code Annotated, Title 28, Section 344.

This case was appealed to the Supreme Court of the State of Michigan (in a proceeding in the nature of a certiorari proceeding) to review the determination of the Corporation Tax Appeal Board of the State of Michigan, to which Board the appellant, Detroit International Bridge Company, appealed from the computation of the Secretary of State for the State of Michigan, of the annual privilege fees for the years of 1929 and 1930. The obligation of the appellant to pay the tax for 1930, however, is the only one before this court on this appeal.

The Detroit International Bridge Company, the appellant, is a corporation organized under the laws of the State of Michigan, with its principal office at Detroit, Wayne County, Michigan. Article III of the Articles of Association of the Detroit International Bridge Company provides:

> "The purpose or purposes of this corporation are as follows:
>
> To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan to Sandwich, Province of Ontario, Canada, and the approaches thereto;
>
> To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The Detroit International Bridge Company, the appellant, has continuously since October 1929 itself operated said bridge for vehicular and pedestrian traffic across the Detroit River, a navigable stream, from Detroit, Michigan to Sandwich, Ontario, Canada, and has engaged exclusively in such business and in no other (R. 5).

The Detroit International Bridge Company, the appellant, contended that the corporation was not subject to the payment of the annual privilege fee under Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan because that statute imposed an annual tax upon corporations for the privilege of *doing* business (as distinguished from the privilege of *being* or continuing to exist or *to be* a corporation); because the powers of appellant corporation were limited under its corporate charter and pursuant thereto it did and could engage only in the carrying on of this business of foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foreign commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

The nature of Act No. 85 of the Public Acts of 1921, of the State of Michigan, the tax statute here in question, has been carefully analyzed and defined by the Supreme Court of Michigan in a case in which the validity of the statute was attacked as being repugnant to certain provisions of the Constitution of the State of Michigan. The Supreme Court of Michigan, in that case, *Union Steam Pump Sales Company vs. Secretary of State of Michigan*, 216 Mich. 261, held "that it is not a property tax, but is a tax on the franchise to do business as a corporation within the state".

Distinguishing the franchise "to be" a corporation from the franchise of doing business as a corporation, the Michigan Supreme Court, after quoting at length from numerous authorities and text writers, summarized, page 272, saying:

> "These authorities demonstrate beyond cavil that there is a distinction and a well recognized one between the franchise to be a corporation and the franchise to do business as a corporation. *One is the franchise 'to be', the other the franchise 'to do'.* One belongs to the corporators, the other to the corporation. . . . The franchise 'to do' (belonging to the corporation) may follow the franchise 'to be' (belonging to the corporators). But each is a different franchise as the authorities above cited demonstrate and the taxation of one is not the taxation of the other, the sources of revenue are not the same, the subjects of taxation are not the same."

It was concluded by the Court, at page 268, that "The law here under consideration levies a specific tax upon the right, the franchise *to do* business as a corporation."

It was necessary for the Michigan Supreme Court in the *Union Steam Pump Sales Company* case to carefully distinguish between the two different corporate franchise taxes in that the proceeds of the tax were payable to the school fund under the State Constitution if the tax were upon the privilege *to be* a corporation, whereas payments under Act No. 85 of the Public Acts of 1921, here in question, were to be credited to the general fund, and the validity of the act could only be sustained if this was a tax imposed for the privilege of *doing* business as a corporation.

The Detroit International Bridge Company, the appellant, had, upon its organization, paid the organization fee to the State of Michigan for the privilege of *being* a corporation and once this privilege fee is paid upon organization there is no provision under the Michigan laws under which a further tax for this privilege of *being* is imposed. The annual privilege fee, Act No. 85 of the Public Acts of 1921, as amended, on the other hand, as has been determined by the Michigan Supreme Court and as is apparent from the language of the statute, is for the privilege of *doing* business as a corporation. It is for the privilege of doing business for which this tax is imposed upon corporations.

The Detroit International Bridge Company, the appellant, claimed and contended that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan, so far as applied to it, is unconstitutional in that the Act attempted to impose a tax upon it for the privilege of doing business when the only business it did and could do as a corporation under its charter was to engage exclusively in foreign commerce, and that to uphold the validity of the Act as applied to it would be an improper interference with and regulation of foreign commerce by the State of Michigan, and thereby violates the power of Congress, to regulate foreign commerce as provided in Article I, Section 8, Clause 3 of the Constitution of the United States.

These questions were raised in the appeal to the Supreme Court of the State of Michigan in the manner and form required under the practice of said court (R. 12, 19), and said questions were considered at length by said Supreme Court of the State of Mich-

igan. The contentions of the appellant that the application of the statute as made by the Secretary of State and as applied to it was in violation of the Commerce Clause (Article I, Section 8, Clause 3) of the Constitution of the United States were expressly overruled by the judgment and the opinion rendered by said Supreme Court of the State of Michigan (257 Mich. 52; 240 N. W. 68).

It is the contention of the appellant, Detroit International Bridge Company, that this court has jurisdiction of this appeal under the provisions of the Judicial Code, Section 237, United States Code, Annotated, Title 28, Section 344, that in the final judgment of the Supreme Court of the State of Michigan, which is the highest court of that state, there has been drawn in question the validity of a statute of the State of Michigan on the ground that it is repugnant to the Constitution of the United States and because the decision of the Supreme Court of Michigan is in favor of the validity of said statute. See *General Oil Company vs. Crain*, 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 754; *Atlantic Coast Line Railroad Co. vs. Wharton*, 207 U. S. 328, 28 Sup. Ct. 121, 52 L. Ed. 230.

Respectfully submitted,

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Detroit International Bridge Company.

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Supreme Court of the United States

OCTOBER TERM, 1932

No. 51

DETROIT INTERNATIONAL BRIDGE COMPANY,
APPELLANT,

vs.

CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN

Appeal from the Supreme Court of the State of Michigan.

BRIEF FOR DETROIT INTERNATIONAL BRIDGE COMPANY

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OPINION BELOW

The opinion of the lower court—the Supreme Court of the State of Michigan (R. 57-63)—is reported in 257 Mich. 52, 240 N. W. 68.

JURISDICTION

A statement of the Detroit International Bridge Company, appellant, setting forth the basis on which the review of the judgment of the Supreme Court of Michi-

gan is here invoked on appeal has been heretofore filed with this Court in this cause in compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States.

STATEMENT

The Detroit International Bridge Company, the appellant, is a corporation organized under the laws of the State of Michigan, with its principal office at Detroit, Wayne County, Michigan. The purpose and power of this corporation was to construct, and upon completion of the construction, to operate, a bridge for vehicular and pedestrian traffic across the Detroit River, a navigable stream, from Detroit, Michigan, to Sandwich, Ontario, Canada. Under the provisions of Article III of the Articles of Association of the Detroit International Bridge Company, the powers of the corporation were limited solely to these purposes:

> "The purpose or purposes of this corporation are as follows:
>
> To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto;
>
> To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

Permission and authority for the construction of the American portion of this bridge was granted by an Act of Congress, approved March 4th, 1921, and amended subsequently by several later Acts of Congress. Permission and authority for the construction of the Canadian portion of the bridge was granted to the Canadian Trans-

it Company, a subsidiary of Detroit International Bridge Company, which owns the Canadian portion of the bridge, by an Act of Parliament of the Dominion of Canada, finally approved by the Governor General of Canada on March 31st, 1927.

The appellant, Detroit International Bridge Company, the American company, owns the bridge structure up to the middle of the Detroit River. The Canadian Transit Company owns the other portion of the bridge structure from Canada to the center of the river. All of the stock of the Canadian Transit Company, the subsidiary company, is owned by the American company, the Detroit International Bridge Company, the appellant. The Canadian Transit Company leased the Canadian portion of the bridge to the parent company, the Detroit International Bridge Company, and the appellant, the Detroit International Bridge Company operates the entire bridge, including the Canadian portion of the structure as one operating unit from Detroit to Canada and from Canada to Detroit, having the obligation to maintain and keep in repair the entire bridge structure.

Upon the completion of the construction of this bridge in October, 1929, and continuously thereafter, the Detroit International Bridge Company, appellant, has itself, through its own officers and employees, operated this bridge, all vehicular and pedestrian traffic being permitted the use thereof upon payment of toll as approved by the War Department. Limited by its corporate powers and purpose the Bridge Company has engaged exclusively in the carrying on of this business since October, 1929, and in no other.

Upon incorporation in 1927, the Detroit International Bridge Company paid the Secretary of State for the State of Michigan the franchise or organization fee for the privilege of *being* a corporation under Act #85 of

the Public Acts of 1921, Secs. 3 and 3A, as amended by Act #33 of the Public Acts of 1927. Distinguished from this organization or franchise fee which is paid for the privilege of bringing into being, for the privilege of being or continuing to exist or to be a corporation, Michigan also imposes an annual privilege fee upon corporations being Sections 4 and 5 of Act #85 of the Public Acts of 1921, as amended by Act #175 of the Public Acts of 1929, Sections 4 and 5. As will be pointed out hereinafter, this annual privilege fee is imposed upon domestic and foreign corporations for the privilege of exercising corporate franchises within the State, and for the privilege of doing business in Michigan.

After the Detroit International Bridge Company, the appellant, had commenced to operate this international bridge it contended that it was not subject to the payment of the annual privilege fee for the privilege of doing business in Michigan, because the powers of appellant corporation were limited under its corporate charter and pursuant thereto it did and could engage only in the carrying on of this business of foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foreign commerce in violation of Article I, Section 8, Clause 3 of the Constitution of the United States.

This issue was first raised by the Detroit International Bridge Company, the appellant, in an appeal to the Corporation Tax Appeal Board for the State of Michigan, involving its obligation to pay the privilege fee for the year 1930. That Board also had before it other questions involving both the 1929 and 1930 tax which are not here in issue. From the ruling of the Tax Appeal Board the Detroit International Bridge Company appealed to the Supreme Court of Michigan (in a proceeding in the na-

ture of a certiorari proceeding). This appeal is from the judgment entered by the Supreme Court of the State of Michigan and only involves the one constitutional question having to do with the obligation of the appellant to pay the annual privilege tax for the year 1930.

SPECIFICATION OF ERRORS TO BE URGED AND QUESTION PRESENTED

The question here presented to the Court is set forth in the two Assignments of Error filed by the appellant in lodging this appeal. Both Assignments of Error are here urged, as follows:

> (1) The Supreme Court of the State of Michigan erred in holding (a) that Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929 of the State of Michigan (Sections 10140, 10143, 10144 and 10145 of the Compiled Laws of Michigan, 1929, inclusive) is constitutional in application to plaintiff and its business, (b) said Act, so far as applied to plaintiff, does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and (c) in applying said statute and imposing the privilege fee for the year 1930 upon plaintiff, the State of Michigan did not unduly interfere with and thereby usurp or violate the power of Congress of the United States to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States.
>
> (2) The tax imposed by Section 4 of said Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929 of the State of Michigan, not being imposed on the privilege to be a corporation (such tax being imposed by Section 3 of said Act No. 85 of the Public Acts of 1921, as amended by Section 3 of Act No. 175 of the Public Acts of 1929, but be-

ing imposed on the privilege to do the business for which organized and such business of the plaintiff being solely and exclusively the maintenance and operation of an instrumentality of foreign commerce, viz., an international highway toll bridge such privilege (as distinguished from the privilege to be organized as a corporation with power to do such business if permitted by the competent authority) is not grantable by or otherwise within the competency of the State of Michigan, but is solely within the jurisdiction of Congress under Article I, Section 8, Clause 3 of the Constitution of the United States and the Supreme Court of the State of Michigan erred in not holding said Section 4 of said Act not applicable to plaintiff and its business or not valid under said provision of the United States Constitution if so applied.

MICHIGAN STATUTES INVOLVED

The question here to be determined on this appeal is whether or not the statute providing for the payment of an annual privilege fee by corporations can be constitutionally applied to, and whether this annual tax can be validly imposed upon, the appellant corporation. The section of the statute in question, Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, is:

> "Sec. 4. Privilege fee, Basis of. Every corporation organized or doing business under the laws of this state, excepting railroad companies and interurban railroad companies, and telephone and telegraph companies, express companies and foreign insurance companies shall, at the time of filing its annual report with the secretary of state of this state, as required by section five of chapter two of part five of act number eighty-four of the public acts of nineteen hundred twenty-one, for the

> privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state an annual fee of two and one-half mills upon each dollar of its paid-up capital and surplus, but such privilege fee shall in no case be less than ten dollars nor more than fifty thousand dollars. It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporation franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

Section 3 of Act No. 85 of the Public Acts of 1921, in force at the time the appellant corporation was organized, provided for the payment by every domestic corporation organized for profit and every foreign corporation applying for admission to do business within the State "of an organization fee—for the privilege of exercising its franchise within the state." This organization tax was paid by the Detroit International Bridge Company to the State upon incorporation. This provision of the Act, Sec. 3, reads as follows:

> "Sec. 3. Every domestic corporation hereafter organized for profit, and every foreign corporation for profit hereafter applying for admission to do business within this state, shall at the time of filing its articles or applying for admission, as the case may be, pay to the secretary of state, as an organization fee and for the privilege of exercising its franchises within this state, a sum equal to one mill upon the dollar for each dollar of the authorized capital stock of such corporation; and each corporation heretofore or hereafter incorporated under the laws of or admitted to do business in this state, shall pay a proportionate fee upon each and any increase in its authorized capital stock made subsequent to the passage of this act. - - -"

Section 3 of Act No. 175 of the Public Acts of 1929, in force in 1929, having similar provisions, except that the franchise fee imposed under that act was reduced to one-half mill. The other language in this section of the statute is identical.

ARGUMENT

There are two major issues here involved. The appellant, Detroit International Bridge Company, contends:

> (1) that by owning, operating and maintaining the Detroit International bridge for vehicular and pedestrian traffic across the Detroit River, a navigable stream, from Detroit, Michigan, to Sandwich, Ontario, Canada, that it is and has been engaged exclusively in the business of foreign commerce;
>
> (2) that the Detroit International Bridge Company, the appellant, was not subject to the payment of the annual privilege fee for the year 1930 under sections 4 and 5 of Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, sections 4 and 5, because that statute imposed an annual tax upon corporations for the privilege of *doing* business (as distinguished from the privilege of *being* or continuing to exist or *to be* a corporation); because the powers of appellant corporation were limited under its corporate charter and pursuant thereto it did and could engage only in the carrying on of this business of foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foreign commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

The Appellant, Detroit International Bridge Company, by owning, operating and maintaining the International Bridge from Detroit, Michigan, to Canada was engaged exclusively in foreign commerce.

The appellant, Detroit International Bridge Company, upon the completion of the bridge structure was the owner of the Detroit International Bridge and was engaged in maintaining and operating this highway bridge for the passage of vehicular and pedestrian traffic from Detroit, Michigan, to Sandwich, Ontario, Canada, charging and collecting tolls for the passage of traffic thereover.

Under the provisions of Article 3 of the Articles of Association of the Detroit International Bridge Company the powers vested in the corporation were limited solely to these purposes:

> To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada and the approaches thereto;
>
> To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use.

Upon the completion of the bridge in 1929, and continuously thereafter, the Detroit International Bridge Company, the appellant, has, through its own officers and employees, maintained and operated this bridge. Not having other corporate powers or purpose the appellant engaged in no other business whatsoever.

Although in the court below, counsel for the Corporation Tax Appeal Board of Michigan, the appellee, con-

tended that the appellant in maintaining and operating this international highway bridge was not engaged in the business of foreign commerce, the Michigan Supreme Court in considering this constitutional question raised by the appellant apparently treated this argument of the Tax Appeal Board as being without merit, because in its opinion it treated only the question of whether or not a privilege fee, such as is here involved, if applied to appellant corporation would violate the Commerce Clause of the United States. If the Michigan Supreme Court had found merit in this contention of the Tax Appeal Board, it would have been unnecessary to consider the constitutional question at all, since there could be no interference with foreign commerce if the appellant were not engaged in foreign commerce.

The Michigan Supreme Court in considering the nature of the Detroit International Bridge in the case of *Detroit International Bridge Co. v. American Seed Co.*, 249 Mich. 289, at 298, 228 N. W. 791, 794, held that:

> "The Federal government is interested in it by virtue of its constitutional authority over navigation, interstate and foreign commerce and post roads."

The Michigan court both in that case and in the present case treated the business of the appellant company as being engaged in the business of foreign commerce.

The case of *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S. 204, is here controlling. In that case the Covington & Cincinnati Bridge Company was organized under the laws of both Ohio and Kentucky, and built and itself operated (as does the Detroit International Bridge Company) a bridge spanning the Ohio River, charging toll for vehicular and pedestrian traffic crossing over this structure. Kentucky enacted

certain laws in reference to the toll rate and operation of the bridge, which the Bridge Company in that case contended was in violation of the Commerce Clause of the Federal Constitution. According to Mr. Justice Brown of the United States Supreme Court, at pg. 217, there were two questions which had to be decided, being:—

> "First, whether such traffic across the river is interstate commerce; and second, whether a bridge can be considered an instrument of such commerce.
>
> The first question must be answered in the affirmative upon the authority of *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, in which the State of Pennsylvania attempted to tax the capital stock of a corporation whose entire business consisted in ferrying passengers and freight over the river Delaware between Philadelphia, in Pennsylvania, and Gloucester, in New Jersey. This traffic was held to be interstate commerce, and inasmuch as it appeared that the ferry boats were registered in New Jersey and were taxable there, it was held that there was no property held by the company which could be the subject of taxation in Pennsylvania, except the lease of a wharf in that State.
>
> - - - With reference to the second question, an attempt is made to distinguish a bridge from a ferry boat, and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. Commerce was defined in *Gibbons v. Ogden*, 9 Wheat 1, 189, to be 'intercourse,' and the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool. While the bridge company is not itself a common carrier, it affords a highway for

> such carriage, and a toll upon such bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon traffic of such turnpike, or the charges upon a ferry a tax upon the commerce across a river. A tax is laid upon those who do the business of common carriers upon a certain bridge is as much a tax upon the commerce of that bridge as if the owner of the bridge were himself a common carrier."

Counsel for the Tax Appeal Board, the appellee, rely on the case of *Henderson Bridge Company v. Kentucky*, 166 U. S. 150, and *Arkansas & Memphis Ry. Bridge & Terminals Co. v. State*, 174 Ark. 420, 295 S. W. 378 (certiorari having been denied by the Supreme Court, 275 U. S. 548), in support of their contention that the appellant is not engaged in foreign commerce. Both of these cases are readily distinguishable from the case at bar.

In the *Henderson Bridge* case the Bridge Company maintained and operated a bridge structure across the Ohio River from Kentucky to Indiana. The Bridge Company was a corporation organized under the laws of Kentucky. The Bridge Company rented out the use of this railroad bridge to various railroad companies. The State of Kentucky, under the general tax laws, levied a tax upon the Bridge Company covering both its tangible and intangible property. Included in the assessment for intangible property was the franchise granted by the State of Kentucky to the incorporators for the privilege of being a Kentucky corporation, and the tax board there fixed a value of that franchise as an intangible asset of the corporation subject to taxation. The Bridge Company contended that the tax was a franchise tax or a privilege tax for the privilege of engaging in this interstate business, and being a tax upon the privilege of doing business violated the Commerce Clause of the United

States. The court by a majority opinion, four of the Justices joining in a vigorous dissent, decided as appears on pg. 154 of the opinion:

> "The tax in controversy was nothing more than a tax on the intangible property of the Company in Kentucky."

The majority treated the tax as a direct personal property tax, including this franchise as an intangible asset. Clearly even though the bridge were engaged in interstate commerce, it was then and is now well decided that a direct property tax may be imposed by a sovereignty upon corporate assets located within that sovereignty, even though those assets are used exclusively in interstate commerce. *St. Louis & East St. Louis Ry. Co. v. State of Missouri*, 256 U. S. 314; *United States Express Company v. Minnesota*, 223 U. S. 335; *Fargo v. Hart*, 193 U. S. 490; *Postal Telegraph & Cable Co. v. Charleston*, 153 U. S. 692, 700. The statement of the court on page 153, that the tax was not a tax on interstate commerce carried on by means of the bridge because the bridge did not transact such business, was unnecessary to that decision and is not now binding upon the court. Treating the tax as a direct property tax as distinguished from the tax for the privilege of doing business within the state as a corporation, like the tax in the case at bar, the decision of the Supreme Court in the *Henderson* case would necessarily have been the same regardless of whether the Bridge Company were engaged in interstate commerce or not.

Four of the Justices joining in the dissenting opinion of the minority in the *Henderson* case differed from the majority of the court in determining the nature of the Kentucky tax, as well as on the question of whether or not the Bridge Company was engaged in interstate com-

merce. The minority of the court treated the Kentucky tax as a pure franchise or privilege tax, as distinguished from a direct property tax and submitted that in its opinion that this tax being imposed upon the privilege of doing the business in question and was unconstitutional as being a direct imposition of a tax for the privilege of doing interstate business.

The majority of the court in the *Henderson* case did not, by its opinion, consider the *Covington & Cincinnati Bridge Company* case overruled. On page 153 the court said:

> "The regulation of tolls for transportation over the bridge considered in *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S. 204, presented an entirely different question."

The *Covington* case is applicable to the case at bar. A regulation of tolls is a regulation of the doing of business over the bridge. In the case at bar an imposition of a privilege fee for the privilege of doing business, when the only business of the company is operating an international highway bridge of this character, is a regulation of foreign commerce. On the other hand, as has been pointed out hereinbefore, property of a corporation located within a state, though used in interstate commerce, may be subject to a direct property tax. Following this rule, the majority of the court in the *Henderson* case, treating the tax as a direct property tax on a portion of property (the value of the franchise) said to be located in the taxing state of Kentucky, held the tax not to be a burden upon interstate commerce. If the tax in the *Henderson* case were a privilege tax, as the minority of the court held it to be, then it would be imposed for the privilege of doing the interstate business and would be unconstitutional, just as the tax in the case at bar is unconstitutional.

The *Arkansas* case can be distinguished because there the Bridge Company did not itself operate the bridge, but leased the structure to other persons, who in turn operated the structure. As the court in the *Arkansas* case, said referring to the appellant, said ,at page 425:

> "*It does not operate the bridge and does not carry either passengers or goods, in fact it does nothing in the way of commerce, either intrastate or interstate.* It owns, leases repairs and maintains the bridge across the Mississippi river, and, while the bridge may be an instrumentality of interstate commerce so far as the carriers are concerned, the bridge company has nothing whatever to do with carrying either freight or passengers and therefore does not use the bridge as an instrumentality for interstate commerce or any other kind of commerce."

And further at page 426:

> "As we have said, the bridge company merely owns the bridge, *leases* it and maintains it. If a company owned a boat or a number of boats, and leased them to a carrier or to any person or corporation who used the boat in carrying persons or freight in interstate commerce, the boat would be used in interstate commerce, the carrier would be engaged in interstate commerce, but the owner of the boat would have no connection whatever with interstate commerce. And we therefore think that the bridge company in this case is not engaged in interstate commerce, and it is not engaged in the operation of an instrumentality used in interstate commerce."

In the case at bar the Detroit International Bridge Company itself operates the bridge. It engages in the foreign commerce of transporting people across the Detroit River over and upon its highway structure. The transporting of vehicles and persons from one country

to another over a highway structure is as much engaging in foreign commerce as though they were transported by boat or train.

It is apparently impossible to sustain the position of counsel for the Corporation Tax Appeal Board in their contention that the appellant is not engaged in foreign commerce, with other more recent and controlling decisions of the United States Supreme Court.

It has been held that one engaged in maintaining in proper condition a bridge used as an instrumentality of interstate commerce is engaged in interstate commerce. In the case of *Pedersen v. Delaware, Lackawanna & Western Rd. Co.*, 229 U. S. 146, one carrying materials to be used in repairing a bridge over which interstate trains moved was held to be engaged in interstate commerce, Mr. Justice Van Devanter, delivering the opinion of the court, there said among other things, at pg. 151:

> "Tracks and bridges are as indispensable to interstate commerce by railroad as are engines and cars, and sound economic reasons unite with settled rules of law in demanding that all of these instrumentalities be kept in repair. The security, expedition and efficiency of the commerce depends in large measure upon this being done. - - - The work of keeping such instrumentalities in a proper state of repair while thus used is so closely related to such commerce as to be in practice and in legal contemplation a part of it."

One engaged in cooking meals, making beds, etc., for a gang of bridge carpenters in a camp car which was provided and moved from place to place along the railroad line to facilitate their work in repairing bridges over which interstate trains moved was held to be engaged in interstate commerce. *Philadelphia, Baltimore & Washington Railroad Company v. Smith*, 250 U. S. 101.

The court said, at pg. 103:—

> "Taking it to be settled by the decision of this court in *Pedersen v. Delaware, Lackawanna & Western R. R. Co.*, 229 U. S. 146, 152, that the repair of bridges in use as instrumentalities of interstate commerce is so closely related to such commerce as to be in practice and in legal contemplation a part of it, it of course is evident that the work of the bridge carpenters in the present case was so closely related to defendant's interstate commerce as to be in effect a part of it."

In *Kinzell v. Chicago Milwaukee & St. Paul Ry. Co.*, 250 U. S. 130, it was held that one engaged in connection with the construction of a fill to replace a trestle (bridge) over which interstate trains moved was engaged in interstate commerce.

This court has gone so far to hold that *ownership only* of a railroad *wholly within one state leased* to a railroad company doing interstate business and having exclusive possession and control for a yearly money rental would subject the lessor owner to liability as being engaged in interstate commerce, where an injury was sustained by an employee in the course of movement by the lessee railroad of a train of wholly empty cars. *North Carolina Railroad Company v. Zachary*, 232 U. S. 248.

In *State vs. Bates & Rogers Construction Company*, 91 Wash. 183, 157 Pac. 483, employes of an *independent contractor* constructing piers under and for the support of a bridge on the line of the Spokane International Railroad Company over which interstate and foreign traffic moved were held to be engaged in interstate and foreign commerce.

There is one point of substantial difference between the cases just discussed and the case at bar. In those cases

the bridge (or other physical property) was capable of use in intrastate as well as interstate commerce. In the case at bar the bridge is impossible of use in other than foreign commerce. From the very inception of its construction it has been exclusively an instrumentality of foreign commerce—physically incapable of any other use.

A company owning and operating ferry boats carrying passengers from one state to another or from this country to another has been held by this court to be engaged in the business of interstate and foreign commerce. *Glouster Ferry Co. v. Pennsylvania*, 114 U. S. 196; *City of Sault Ste. Marie v. International Transit Co.*, 234 U. S. 333; *Mayor of Vadalia v. McNeeley*, 274 U. S. 676.

A company owning and operating a pipe line for gas or oil from one state to or through another state has been held by this court on several occasions to be engaged in the business of interstate commerce. *Ozark Pipe Line Corporation v. Monier, the State Tax Commission of Missouri*, 266 U. S. 555; *Eureka Pipe Line Co. v. Hallanan*, 257 U. S. 265; *United Fuel & Gas Co. v. Hallanan*, 257 U. S. 277.

To hold that the spanning of a stream by ferry boats from the shore of one state to that of another, or the spanning of distances by pipe lines through which gas or oil flows is interstate commerce, and on the other hand to contend, as does the Corporation Tax Appeal Board, that the spanning of the distance by a bridge over a navigable stream over which vehicles and pedestrians travel from the shore of one state to that of another state or country is not interstate or foreign commerce is to raise a fine distinction with no essential difference. The position is inconsistent and unsupportable.

The Detroit International Bridge Company, the appellant, transports passengers and vehicles over this

structure as much as a ferry company, by its boats, transports its passengers, or as much as a pipe line company transports oil or gas. If the bridge were a swing or draw bridge actually moving and lifting the passengers and vehicles from one shore to another, that contention could not be raised. To hold that a swinging or draw bridge would thereby constitute the appellant's business as that of foreign commerce, and a stationary bridge, such as the one here involved, would not be foreign commerce, merely emphasizes the fine hairpoint distinction counsel for the appellee attempt to make. As has been pointed out hereinabove, this court has ruled out any attempt to distinguish a bridge from a ferry boat on the ground that one is movable and the other is a fixture in the *Covington Bridge Company* case, *supra*.

The Detroit International Bridge Company, the appellant, owning, operating and maintaining this highway bridge from Detroit, Michigan, to Sandwich, Ontario, Canada, must be held to be engaged in foreign commerce.

The Detroit International Bridge Company is Not Subject to the Annual Privilege Tax. The Corporation, Limited by Its Corporate Charter has Been and Is Engaged Exclusively in Foreign Commerce, and to Impose the Annual Tax upon It for the Privilege of Engaging in this Foreign Commerce would be in Violation of Article 1, Section 8, Clause 3, of the Constitution of the United States.

The Supreme Court of the State of Michigan erred in holding that the imposition of the annual privilege fee upon the Detroit International Bridge Company, the appellant, under Act No. 85 of the Public Acts of 1921 as amended by Act No. 175 of the Public Acts of 1925 of

the State of Michigan, Sections 3 and 4, was not in violation and in contravention of Article 1, Section 8, Clause 3 of the Constitution of the United States.

As has been pointed out hereinabove, Detroit International Bridge Company, the appellant, has been and is exclusively engaged in the business of operating this international bridge, and restricted by its corporate power to this purpose, has and could engage in no other business whatever except the carrying on of this foreign commerce.

The nature of Act No. 85 of the Public Acts of 1921, of the State of Michigan, the tax statute here in question, has been carefully analyzed and defined by the Supreme Court of Michigan in a case in which the validity of the statute was attacked as being repugnant to certain provisions of the Constitution of the State of Michigan. The Supreme Court of Michigan, in that case, *Union Steam Pump Sales Company vs. Secretary of State of Michigan*, 216 Mich. 261, held "that it is not a property tax, but is a tax on the franchise to do business as a corporation within the state".

Distinguishing the franchise "to be" a corporation from the franchise of doing business as a corporation, the Michigan Supreme Court, after quoting at length from numerous authorities and text writers, summarized, page 272, saying:

> "These authorities demonstrate beyond cavil that there is a distinction and a well recognized one between the franchise to be a corporation and the franchise to do business as a corporation. *One is the franchise 'to be', the other the franchise 'to do'.* One belongs to the corporators, the other to the corporation. . . . The franchise 'to do' (belonging to the corporation) may follow the franchise 'to be' (belonging to the corporators). But

> each is a different franchise as the authorities above cited demonstrate and the taxation of one is not the taxation of the other, the sources of revenue are not the same, the subjects of taxation are not the same."

It was concluded by the Court, at page 268, that "The law here under consideration levies a specific tax upon the right, the franchise *to do* business as a corporation."

The privilege tax in question in the case at bar is, therefore, imposed upon the privilege of doing business and is unlike the annual privilege tax imposed in many states upon the privilege of being, or continuing to be, a corporation. The case of *Kansas City, Fort Scott & Memphis Ry. Co. v. State of Kansas*, 240 U. S. 227, is different from the case at bar, because in that case the annual privilege fee was imposed upon the privilege of being, or continuing to be, a corporation rather than on the privilege of doing business as a corporation. If the annual privilege tax in the case at bar were likened to that imposed in the *Kansas City* case, it would be in violation of the Michigan Constitution because the receipts from this tax are payable to a different fund than is provided under the Michigan Constitution, under the ruling of the *Union Steam Pump Sales Co.* case, *supra*. It was necessary for the Michigan Supreme Court in the *Union Steam Pump Sales Company* case to carefully distinguish between the two different corporate franchise taxes in that the proceeds of the tax were payable to the school fund under the State Constitution if the tax were upon the privilege *to be* a corporation, whereas payments under Act No. 85 of the Public Acts of 1921, here in question, were to be credited to the general fund, and the validity of the act could only be sustained if this was a tax imposed for the privilege of *doing* business as a corporation.

It is clear that this annual privilege fee is imposed upon domestic corporations not for the privilege of continuing to exist or to be a corporation, as is the nature of the tax in many states, but rather is a tax imposed upon the corporation for the privilege of doing business, which the corporation is empowered to do under its corporate charter. This court has so declared itself in a recent examination of this statute imposing the annual privilege fee upon corporations in the case of *People of the State of Michigan vs. Michigan Trust Company*, 52 Sup. Ct. 512.

The Detroit International Bridge Company, the appellant, had, upon its organization, paid the organization fee to the State of Michigan for the privilege of *being* a corporation and once this privilege fee is paid upon organization there is no provision under the Michigan laws under which a further tax for this privilege of *being* is imposed. The annual privilege fee, Act No. 85 of the Public Acts of 1921, as amended, on the other hand, as has been determined by the Michigan Supreme Court and as is apparent from the language of the statute, is for the privilege of *doing* business as a corporation. To hold that this annual privilege fee was for the privilege of being or continuing to be a corporation would be to violate the Michigan Constitution under the decision of the *Union Steam Pump Sales Company* case (*supra*).

The Detroit International Bridge Company, as has been pointed out heretofore, is restricted by its corporate charter to the business of exclusively maintaining and operating this international passenger and vehicular highway bridge. The Bridge Company can and has operated, and will and can only continue to operate, exclusively in this business of carrying on of foreign commerce so long as its corporate powers are confined by its charter exclusively to this business. For the State by

this act to impose an annual tax upon the Detroit International Bridge Company for the privilege of doing business, when the only business it can carry on is that of foreign commerce, is clearly in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, which provides that:—

> "The Congress shall have power - - - to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

The principle of Constitutional law, that a state can not impose a tax or fee upon interstate and foreign commerce is too firmly established to require the voluminous citation of authorities that pronounce the rule. It should suffice to refer to a few leading cases. This principle was broadly announced in the *Minnesota Rate* cases, 230 U. S. 352, at pg. 400 as follows:—

> "Thus, the States cannot tax interstate commerce, either by laying the tax upon the business which constitutes such commerce or *the privilege of engaging in it*, or upon the receipts (see numerous authorities there cited)."

Ozark Pipe Line Corporation vs. Monier, et. al., 226 U. S. 555 (*supra*), constituting the State Tax Commission of the State of Missouri, and cases therein cited.

The determination of this Court of the case of *Philadelphia & Southern Steamship Company vs. Pennsylvania*, 122 U. S. 327, 7 Sup. Ct. 1118, 30 L. Ed. 1200, and of the case of *Ozark Pipe Line Corporation vs. Monier, et. al.*, (*supra*), should be controlling of the issues here involved. In the *Philadelphia & Southern Steamship Company* case the Steamship Company engaged exclusively in the business of operating sea-going steamships for ocean transportation between the different states of the United States by way of the ocean, and between the

United States and foreign countries. The state of Pennsylvania enacted a law whereby it attempted to impose a tax upon the gross receipts of such companies, derived from the transportation of persons and property by sea between different states and to and from foreign countries. The Philadelphia & Southern Steamship Company was a domestic corporation organized under the laws of Pennsylvania. As Mr. Justice Bradley, speaking for the Supreme Court, announced at pg. 335:—

> "The question which underlies the immediate question in the case is, whether the imposition of the tax upon the steamship company's receipts amounted to a regulation of, or an interference with, interstate and foreign commerce, and was thus in conflict with the power granted by the Constitution to Congress."

The Court held, at pg. 336, that:—

> "The transportation was an act of interstate and foreign commerce. It was the carrying on of such commerce. It was that, and nothing else. In view of the decisions of this Court, it cannot be pretended that the state could constitutionally regulate or interfere with that commerce itself. But taxing is one of the forms of regulation. It is one of the principal forms. Taxing the transportation, either by its tonnage, or its distance, or by the number of trips performed, or in any other way, would certainly be a regulation of the commerce, a restriction upon it, a burden upon it. Clearly this could not be done by the state without interfering with the power of Congress. Foreign commerce has been fully regulated by Congress, and any regulations imposed by the states upon that branch of commerce would be a palpable interference."

In commenting upon this case and in attempting to distinguish it from the case at bar, the Michigan Supreme Court in its opinion said:

> "The tax was levied upon the gross receipts of a steamship company. . . ."

thereby leaving the inference that such a tax was to be distinguished from the imposition of an annual privilege tax. It must be noted, however, that in the *Steamship Company* case a large portion of the opinion of the Court was devoted to the consideration of the tax imposed upon the Steamship Company as being in the nature of a franchise tax. It was contended by the State of Pennsylvania in that case that the tax was upon the franchise of the corporation granted to it by the State. And commenting upon this issue, the Court, at pg. 342, said:—

> "If intended as a tax on the *franchise of doing business*,—which in this case is the business of transportation in carrying on interstate and foreign commerce,—it would clearly be unconstitutional. It was held by this Court in the case of *Gloucester Ferry Company v. Pennsylvania*, 114 U. S. 196, that interstate commerce carried on by corporations is entitled to the same protection against state exactions which is given to such commerce when carried on by individuals."

So to summarize, if this annual tax imposed by Pennsylvania upon the Steamship Company, measured by its gross receipts, was in the nature of a privilege tax for doing business, as was contended by the Attorney General of Pennsylvania, such a tax, according to the ruling of the United States Supreme Court in that case, would be unconstitutional and in violation of the Commerce Clause. The issues there determined are identical to those presented to the Court in the case at bar.

It undoubtedly will be contended by Counsel for the Secretary of State and the Corporation Tax Appeal Board that in view of the 1929 amendment and the ruling in the case of *G. H. Hammond Company*, 246 Mich. 179 (quoting part of the 1929 amendment), that:

> "It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporate franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

That provision of the statute is applicable only to domestic corporations which have the power to engage in business other than interstate and foreign business under their corporate charters, regardless of whether they so operate or not. In the case at bar, as has been pointed out, the Detroit International Bridge Company has no power to engage in any business but that of foreign commerce. This Company is restricted by its corporate charter to operating this international highway bridge and can not engage in any other business whatever. How then can the state impose a tax for the privilege of doing other than international business when the Bridge Company is restricted from engaging in any other business but that of foreign commerce?

It is contended by the Corporation Tax Appeal Board and the Secretary of State that the Detroit International Bridge Company could not do this business as a Michigan corporation unless given the privilege of so doing by the State of Michigan. As has been pointed out hereinbefore, the Detroit International Bridge Company, the appellant, has already paid the State of Michigan the organization fee, the only fee that can be imposed under the Mich-

igan statutes for the privilege of being or continuing to be or exist as a Michigan Corporation. The annual privilege fee is for the privilege of doing the business of a corporation granted under the corporate charter. The same question was raised and held not of weight in the *Philadelphia & Southern Steamship Company* case, at page 343, as well as in the case of *Gloucester Ferry Co. v. Pennsylvania,* 114 U. S. 196, (*supra*).

As was decided in the case of *Sault Ste. Marie v. International Transit Company,* 234 U. S. 333, 340, (*supra*), a state may not make commercial intercourse with another state or a foreign country a matter of local privilege, and require that it can not be carried on without its consent, or exact a fee as the price of its consent for the privilege of doing this interstate foreign business.

The case of *Ozark Pipe Line Corporation vs. Monier* (*supra*) can not be distinguished and is conclusive upon the question here before the Court for determination. In that case the State of Missouri attempted to impose an annual privilege tax upon the Ozark Pipe Line Corporation for the privilege of doing business in the State. The nature of the Missouri tax was similar to that of the Michigan annual privilege tax. It was imposed on a corporation for the privilege of doing business in the State, as distinguished from such privilege taxes as are imposed by some states for the privilege of being, or continuing to be, a corporation. The Ozark Pipe Line Corporation was a foreign corporation, the sole business of which was to transport crude oil from one state to another through its pipe lines. It engaged exclusively in interstate commerce. In Missouri it carried crude oil through its pipes from one state, through Missouri, to another state. The United States Supreme Court held

that this tax was unconstitutional. Mr. Justice Sutherland, speaking for the Court, at page 562, stated:

> "The tax is one upon the privilege or right to do business, *State Ex rel. v. State Tax Commission*, 282 Mo. 213, 234; *and if appellant is engaged only in interstate commerce it is conceded, as it must be, that the tax, so far as appellant is concerned, constitutionally cannot be imposed.* It long has been settled that a State cannot lay a tax on interstate commerce in any form, whether on the transportation of subjects of commerce, the receipts derived therefrom, or the occupation or business of carrying it on."

This Court recently followed the same rule in the case of *State Tax Commission of Mississippi vs. Interstate Natural Gas Company*, 52 Sup. Ct. 62.

The Michigan Supreme Court, in its opinion in the case at bar, attempted to distinguish the *Ozark Pipe Line* case and the *Interstate Natural Gas Company* case with the observation that

> "The state sought to enforce a statute providing for the collection of such a tax on corporations not organized under its laws and exclusively engaged in interstate commerce."

However, the United States Supreme Court in the *Monier* case held that this same rule must apply to a domestic corporation, where the tax sought to be imposed is one upon the privilege of doing business and the only business done or that can be done by the domestic corporation is interstate or foreign business. Commenting on this point, Mr. Justice Sutherland speaking for the court said at page 567:

> "Nor is it material that appellant applied for and received a Missouri license or that it had the

> power thereunder to exercise the right of eminent domain. These facts could not have the effect of conferring upon the State an authority, denied by the Federal Constitution, to regulate interstate commerce. *The State has no such power even in the case of domestic corporations. See Philadelphia S. S. Co. v. Pennsylvania,* 122 U. S. 326, 342. The statute as applied to appellant is unconstitutional."

The argument was made in the case of *Philadelphia & Southern Steamship Company v. Pennsylvania, supra,* that although this tax for the doing of interstate or foreign business could not be imposed upon a foreign corporation, it might nevertheless be imposed upon a domestic corporation, which derives its powers from the State. The Court in the *Philadelphia & Southern Steamship Company* case, at page 344 said:

> "The decision in this case and the reasoning on which it is founded so far as they relate to the taxation of interstate commerce carried on by corporations, *apply equally to domestic and foreign corporations.* No doubt the capital stock of the former, regarded as inhabitants of the state, or their property, may be taxed as other corporations and inhabitants are, provided no discrimination be made against them as corporations carrying on foreign or interstate commerce, so as to make the tax, in effect, a tax on such commerce. But their business as carriers in foreign or interstate commerce cannot be taxed by the state, under the plea that they are exercising a franchise."

We are not unmindful of the case *In re Detroit & Windsor Ferry Company,* 232 Mich. 574. That case is not here controlling and furthermore can readily be distinguished from the case at bar. The judgment by the Michigan Supreme Court (not carried up on appeal for

determination by this court) on the question of whether or not the application of a statute contravened the Federal constitution is not binding upon this court. This rule is too fundamental to require the citation of authorities. In the *Detroit & Windsor Ferry Company* case the Federal question was never appealed to this Court for determination, and at all events the *Detroit & Windsor Ferry Company* case can be readily distinguished. In that case the business of the Ferry Company was not restricted exclusively to foreign commerce. A portion of its business was devoted to intrastate business, that is, operating a ferry service to and from Belle Isle, which is a part of the City of Detroit. The Detroit and Windsor Ferry Company could and did engage in intrastate commerce and had the ability and power under its charter and the purposes therein enumerated and granted, to devote itself to business other than purely foreign or interstate commerce.

In the case at bar the Detroit International Bridge Company is restricted by the corporate powers granted to it by its charter to operate an international highway bridge, and under these limited powers, it can engage in no business other than that of this foreign commerce.

A corporation only possesses such powers as are expressly enumerated in and granted to it by its charter as limited by its Articles of Association. The corporation has no inherent rights such as belong to individuals. Its activities must be confined specifically to those powers granted to it under its charter and the very grant of enumerated powers of necessity excludes any other powers not therein mentioned. This is the general and prevailing rule of law in this country. *Thompson on Corporations*, 3rd Ed. Vol. 3, Sec. 2183; *Fletcher Cyc. Corporations*, Vol. 2, Secs. 775 and 784. And this is and has been the prevailing rule in Michigan since the earliest

times. In the case of *Bank of Michigan v. Miles,* 1 Douglas (Michigan) 401, the doctrine is forcibly pronounced at page 403 as follows:—

> "In these cases the grant of power is before us. The charter defines the grant, with its restrictions and limitations. - - -
>
> A corporation, says Ch. J. Marshall, being the mere creature of law, possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence: *Trustees of Dartmouth College v. Woodward,* 4 Wheat., 518. The same doctrine is asserted by McLean J., in *Beatty v. Knowles' Lessee,* 4 Pet., 152, and is, in effect, contained in all the American cases on the subject. - - -
>
> In determining on the extent of such power in a particular instance, under a charter, we are to look at the grant and restriction; and, unless the power is found in the charter, it cannot be considered as possessed. The very grant of specified powers under restrictions, is an exclusion of other powers in reference to the same subject matter, not granted by the charter."

See *Orr v. Lacey,* 2 Douglass (Michigan) 230; *People v. River Raisin & Lake Erie Railroad Co.,* 12 Michigan 389, 395.

In the *Detroit and Windsor Ferry Company* case it might well have been said, as the counsel for the Corporation Tax Appeal Board will undoubtedly argue, that the Ferry Company be required to pay for the privilege of doing corporate business whether it exercised the privilege or not since the Ferry Company had the power and did engage in business other than that of foreign commerce. Quite different is the case at bar where the Detroit International Bridge Company can engage in no business except that of operating this international high-

way bridge, its operations being exclusively devoted to that of foreign commerce. It cannot forcibly or logically be argued that the International Bridge Company be compelled to pay an annual tax for the privilege of doing an intrastate business whether it exercise this privilege or not, since it is not ever within its powers to exercise the privilege of doing intrastate business.

If this tax is imposed for the privilege of doing business upon the Bridge Company, it is and must be imposed upon it for the privilege of engaging exclusively in foreign commerce and nothing else. And clearly to impose a tax upon a corporation for the privilege of engaging in foreign commerce is in violation of the Commerce Clause of the United States Constitution.

CONCLUSION

We respectfully submit that the judgment of the Supreme Court of the State of Michigan should be reversed.

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Detroit International Bridge Company,

Appellant.

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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 51

DETROIT INTERNATIONAL BRIDGE COMPANY,
APPELLANT,

vs.

CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN

Appeal from the Supreme Court of the State of Michigan.

REPLY BRIEF OF DETROIT INTERNATIONAL BRIDGE COMPANY

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Because counsel for appellee cite authorities involving taxes and issues of a nature so materially different from those here involved, it becomes necessary to briefly re-state appellant's position, and to point out wherein the authorities cited by appellee have no application to the case at bar.

There is no contention made by appellant or appellee that the tax here involved is in the nature of or in lieu of a direct property tax. To the contrary, both litigants have referred the court to various Michigan authorities which have expressly stated "that this is not a property

tax, but is a tax on the franchise of the corporation to do business within the state." It is important to point out to the court that the Detroit International Bridge Company, the appellant, is subject to and has each year since its existence paid to the City of Detroit, to the County of Wayne and to the State of Michigan a direct real property tax covering that portion of its property located within the City of Detroit, in the County and State (in accordance with the provisions of Sections 1 and 2 of Act 206 of Public Acts of Michigan of 1893, as amended, 1 Compiled Laws of Michigan of 1929, Sections 3389 and 3390). The property tax paid by the appellant Bridge Company to the City, State and County for the year of 1931 amounted to $139,026.95 and the yearly property tax assessed against it is approximately for the same amount.

Counsel for appellee have cited such cases as *Fargo v. Hart*, 193 U. S. 490; *East St. Louis Ry. Co. v. Missouri*, 256 U. S. 314; *United States Express Co. v. Minnesota*, 223 U. S. 335. Those cases involve the imposition of a direct property tax upon a corporation in which the property subjected to the tax is used in interstate commerce. We are quite in accord with the doctrine of those cases, that is, that the property of a foreign corporation located within a state may be subject to a property tax, generally assessed against property of all persons or corporations, even though that property be used in interstate or foreign commerce. The appellant, Detroit International Bridge Company, is subject to and each year pays such a tax and we are not here contesting the validity of the imposition of such a direct property tax.

Nor is the tax in the case here involved imposed in lieu of a property tax, as was that imposed in the case of *Maine v. Grand Trunk Ry. Co.*, 142 U. S. 217, cited by appellee. In that case, under the very language of the

taxing statute, the act provides that the annual excise tax "for the privilege of exercising its franchises within this state, which, with the tax provided for in Sec. one, *shall be in lieu of all taxes upon such railroad company, its property and stock.*" See *Postal Telegraph Cable Co. v. Adams*, 155 U. S. 658. If the tax here involved were imposed upon the appellant Bridge Company in lieu of a direct tax upon that portion of its property located within the state, then the doctrine of the *Maine v. Grand Trunk Ry. Co.* case, *supra*, might be employed.

Nor is the case of *Postal Telegraph & Cable Co. v. Charleston*, 153 U. S. 692, 700, cited by appellee applicable. In that case the court sustained the right of the City of Charleston to impose a small license tax on business purely local in character, in no way intended to cover interstate or foreign commerce upon the theory that the Federal Government cannot prohibit a State from regulating purely local business which is solely within the province of the State to regulate, any more than a State can regulate or tax purely interstate or foreign commerce which is solely subject to the control of the Federal Government. It is our contention in the case at bar that the tax here involved is for the privilege of doing business as a corporation, and that because the appellant does no intrastate business and is engaged exclusively in foreign commerce, and under its corporate charter has no power to engage in business other than this foreign commerce, that the tax, insofar as its application to appellant is concerned, is unconstitutional.

The case of *Hump Hairpin Co. v. Emerson*, 258 U. S. 290, involves a question not here before the court. In that case a state imposed an annual franchise fee upon a corporation which was engaged in both inter and intrastate business. The court in that case pointed out that the state had only attempted to impose a privilege tax

upon the intrastate business as distinguished from the interstate business, and the rule was announced that although property used without the state formed a part of the formula, the method of computation should be sustained so long as it would result in a fair approximation of the amount of purely local or intrastate business for which the corporation was being taxed. If the formula or method of measuring the franchise tax would result in taxing the interstate or foreign business, as well as the purely intrastate business, the tax would be invalid and unconstitutional. *International Paper Company v. Commonwealth of Massachusetts*, 246 U. S. 135. In the case at bar, since the appellant Bridge Company is engaged exclusively in foreign commerce and has no power under its charter to engage in any other business, it cannot be subjected to this Michigan annual tax imposed upon corporations for the privilege of doing business for to do so would be to tax it for the privilege of doing foreign commerce.

The case at bar is different from the case of *Kansas City v. Stiles*, 242 U. S. 112, cited by appellee, in that in the case at bar appellant Bridge Company engages and has power to engage in no other business than that of foreign commerce, whereas in the case of *Kansas City v. Stiles*, the corporation is a consolidated corporation under the laws of Alabama and is engaged in both interstate and intrastate commerce. If the privilege tax in that case were for the privilege of doing business, it could have been validly imposed for the privilege of doing intrastate business. If it were imposed for the privilege of being or continuing to be a corporation, the corporation in that case being a domestic corporation under the consolidation statute, could be validly subject to the tax for that privilege. In the case at bar, the tax is imposed not for the privilege of "being" but for the

privilege of doing business, and appellant Bridge Company having no power to engage in any other business than that of foreign commerce, cannot be subject to the tax.

And likewise, the case of *Kansas City Ry. Co. v. Kansas,* 240 U. S. 227, is one where the privilege tax imposed by the State of Kansas upon a domestic corporation was for the privilege of being or continuing to be a corporation under the laws of that state. And in the case of *Ashley v. Ryan,* 153 U. S. 437, cited by appellee, the privilege tax imposed was one for the privilege of being or continuing to be a domestic corporation. The corporation in that case was consolidated under the laws of the State of Ohio, and the court held that if the corporation elected to obtain the privilege of being or existing as a body corporate, it would necessarily be required to submit to the conditions imposed by the state of the privilege granted by that state. If the Michigan tax were imposed for the privilege of being or continuing to be or exist as a corporation as the tax was in those cases, it would be in violation of the Michigan constitution under the ruling of *Union Steam Pump Sales Co. v. Secretary of State,* 216 Mich. 261, in that the proceeds of this tax are payable to a fund different than is required by the Michigan constitution if this were a tax upon the privilege of being or continuing to be or exist as a Michigan corporation. In the case at bar, the tax is not imposed by the state for the privilege of being or continuing to be or exist as a corporation, but rather is imposed for the privilege of doing business, and since the only business which is done or can be done under the charter of the appellant Bridge Company is that of foreign commerce, the appellant Bridge Company cannot be subjected to the tax.

The case of *Flint v. Stone, Tracy Co.*, 220 U. S. 142, cited by appellee, can have no present application. In that case it was held that Congress clearly had the power to impose a privilege tax upon all corporations doing business in this country. The question there in issue was whether or not the measure or the computation of the amount of tax to be imposed for the privilege could validly include otherwise tax exempt securities. In the case at bar, appellant contends that the tax cannot validly be imposed upon it at all, since it is engaged exclusively in foreign commerce. The method of measuring the tax is not here involved, but rather the power of the State of Michigan to impose this tax upon appellant corporation at all. In the case at bar it is clear that the power of the State of Michigan to regulate corporations is limited to the granting or taxing of the privilege of doing business within the State and it cannot regulate or tax the doing of foreign commerce by the corporation. Since appellant has no power to engage in any business other than that of foreign commerce, it cannot be subject to this tax.

Counsel for appellee on page 2, 3 and 10 of their brief, contend that the appellant Bridge Company has power to engage in other businesses than that of owning, operating and maintaining this highway bridge under their corporate charter. An examination of these claimed powers is set forth on page 2 and 3 of their brief, clearly demonstrates that they are merely in furtherance of the objects and purposes granted by the state, that is in furtherance of the business of owning and operating this international highway bridge. These other so-called powers to purchase, exchange and obtain real estate, to acquire stock in other corporations and to issue its own shares, bonds, debentures and notes, or other evidence to borrow money, and to guaranty bonds of the subsidiary

must be "incidental or appurtenant to or growing out of or connected with said purposes, objects and powers" of the corporation. The general powers and purposes of the corporation are to own and operate an international highway bridge. The other powers are only incidental to this express purpose and do not permit the corporation to engage in any other business not expressly provided for in the purpose clause of its charter. They do not permit the corporation, apart from its general powers, to engage in purely intrastate commerce, and are merely necessary incidents to its power and of its doing of this power of foreign commerce.

That the appellant Bridge Company has been engaged exclusively in foreign commerce, and its corporate powers are limited to the doing of this business exclusively, is discussed in our brief, pages 9 to 19. We merely wish to refer to a portion of the opinion of this court in the case of *Cleveland Railway Co. v. Backus*, 154 U. S. 439, bearing upon this question. Although that case involved the right of a state to impose a property tax, the court, in its opinion, considered the question of whether or not the imposition of a further burden or license or tax for the privilege of using, constructing or operating a bridge or other instrumentality of interstate commerce would be valid. Mr. Justice Brewer, speaking for the court, at page 446 said:

> "Take, for illustration, property whose sole use is for purposes of interstate commerce; such as a bridge over the Ohio between the states of Kentucky and Ohio. From that springs its entire value. Can it be that it is on that account entirely relieved from the burden of state taxation? Will it be said that the taxation must be based simply on the cost, when never was it held that the cost of a thing is the test of its value? Suppose there be two bridges over the Ohio, the cost

of the construction of each being the same,—one between Cincinnati and Newport, and another 20 miles below, and where there is nothing but a small village on either shore. The value of the one will, manifestly, be greater than that of the other, and that excess of value will spring solely from the larger use of the one than of the other. Must an assessing board in either state, assessing that portion of the bridge within the state for purposes of taxation, eliminate all of the value which flows from the use, and place the assessment at only the sum remaining? It is a practical impossibility. Either the property must be declared wholly exempt from State taxation, or taxed at its value, irrespective of the causes and uses which have brought about such value.

"And the uniform ruling of this court—a ruling demanded by the harmonious relations between the states and the national government—has affirmed that the full discharge of no duty intrusted to the latter restrains the former from the exercise of the power of equal taxation upon all private property within its territorial limits. *All that has been decided is that beyond the taxation of property, according to the rule of ordinary property taxation, no state shall attempt to impose the added burden of license or other tax for the privilege of using, constructing, or operating any bridge, or other instrumentality of interstate commerce, or for the carrying on of such commerce.*"

CONCLUSION

It is respectfully submitted that the privilege tax here in question imposed by the State of Michigan upon corporations is for the privilege of doing interstate business. The appellant Bridge Company is engaged exclusively in foreign commerce. Under its charter it has

no power to engage in any other business than operating and maintaining this international bridge, the business of foreign commerce. If this tax is imposed for the privilege of doing business upon the Bridge Company, it is, therefore, and must be imposed upon it for the privilege of engaging exclusively in foreign commerce. And, clearly, to impose a tax upon a corporation for the privilege of engaging in foreign commerce, is in violation of the Commerce Clause of the United States Constitution. We respectfully submit that the judgment of the Supreme Court of Michigan should be reversed.

Respectfully submitted,

ALFRED A. COOK,
THOMAS G. LONG,
VICTOR W. KLEIN,
Of Counsel.

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CHARLES ELMORE CROPLEY

IN THE SUPREME COURT of the UNITED STATES

October Term, 1931

DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan Corporation,
Appellant,

vs.

CORPORATION TAX APPEAL BOARD OF MICHIGAN,
Appellee.

No. 51

STATEMENT BY APPELLEE OPPOSING JURISDICTION

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IN THE SUPREME COURT
of the
UNITED STATES

October Term, 1931

DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan Corporation, Appellant, vs. CORPORATION TAX APPEAL BOARD OF MICHIGAN, Appellee.	No. 908

STATEMENT BY APPELLEE OPPOSING JURISDICTION

The Appellee respectfully presents the reply statement provided for in Subdivision II of Rule 12 of the Rules of this Court and presents the reasons why it is believed that this Court has no jurisdiction in the matter at bar.

THE NATURE OF THE CASE

On the 5th day of April, 1932, the Detroit International Bridge Company, Appellant, by its counsel filed in the Supreme Court of the State of Michigan an application for leave to appeal to the United States Supreme Court from the judgment entered by th Supreme Court of the State of Michigan on April 5th, 1932, sustaining the opin-

ion of the Corporation Tax Appeal Board of Michigan, in favor of the validity of the statute. The order allowing the appeal was signed and entered by the Chief Justice of the Supreme Court of the State of Michigan on April 5th, 1932.

STATEMENT OF THE CASE

I.

The Detroit International Bridge Company, Appellant, in its allegation of assignment of errors filed with the Michigan Supreme Court claimed that the Supreme Court of the State of Michigan erred in holding:

"(a) That Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929 of the State of Michigan is constitutional in application to Appellant and its business.

(b) That said Act, so far as applied to Appellant does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and

(c) In applying said statute and imposing the privilege fee for the year 1930 upon Appellant the State of Michigan did not unduly interfere with and thereby usurp or violate the power of Congress of the United States to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States."

II.

The tax in question is imposed by virtue of the following statutes of Michigan, Act 85, Public Acts of 1921 as amended by Act 175, Public Acts of 1929, (Sections 4 (10140) and 5 (10143):

Sec. 4. "Every corporation organized or doing business under the laws of this state, excepting railroad companies and interurban railroad companies, and telephone and telegraph companies, express companies and foreign insurance companies shall, at the time of filing its annual report with the secretary of state of this state, as required by section five of chapter two of part five of act number eighty-four of the public acts of nineteen hundred twenty-one, for the privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state an annual fee of two and one-half mills upon each dollar of its paid-up capital and surplus, but such privilege fee shall in no case be less than ten dollars nor more than fifty thousand dollars. It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporate franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

Sec. 5. "In the case of computing the franchise and privilege fees prescribed by sections three and four of this act, respectively, both as to domestic and foreign corporations, such computation shall be made upon the corporation's property, both tangible and intangible, owned or used in Michigan in the ratio that such property bears to the entire property of the corporation, and such ratio shall be applied by the secretary of state to determine the amount of the authorized capital stock owned or used in Michigan, and to determine what portion of the corporation's paid-up capital and surplus, severally, are owned or used in Michigan. The term "surplus" as used in this act, shall be taken and deemed to mean the net value of the corporation's property, less its outstanding indebtedness and paid-up capital; but in no case, either as domestic or as to foreign corporations, shall any deduction be made from the item of paid-up capital, in computing the privilege

fee thereon, by reason of any impairment of the same. None of the property or capital of any corporation subject to paying the privilege fee prescribed in section four which is located without the state of Michigan, and none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce, shall in any case enter into the computation of the net amount of the authorized capital, or the capital and surplus, as the case may be, upon which the computation of the privilege fees shall be made: Provided, That in determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, such property shall be considered to be located, owned or used in this state for the purposes hereof, if used in or acquired from the conduct of its business in this state, irrespective of the domicile of the corporation. The secretary of state shall in all such cases be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the privilege fee to be paid by such corporation. For the purpose of this act only, each share of no par value shall be deemed to have the value of at least one dollar, or such value as shall have been fixed by the corporation for the sale of such stock, or the book value as determined by the secretary of state, which ever may be the higher. In any case where the capital of a corporation is not divided into shares, the whole property thereof shall be deemed to be the authorized capital stock for the purpose of this act."

As will be noted, this is an annual tax on the privilege of doing business as a corporation.

It affects corporations generally and does not discriminate against corporations engaged in interstate and foreign commerce.

The Supreme Court of Michigan in Union Steam Pump

Sales v. Secretary of State of Michigan, 216 Michigan 261 so interprets the tax:

> "that it is not a property tax but a tax on the FRANCHISE to do business as a corporation within the State."
>
> "The law here under consideration levies a specific tax upon the RIGHT, the FRANCHISE to do business as a corporation."

As a Michigan corporation it has the PRIVILEGE and RIGHT to exercise its franchise and for this privilege the State is seeking to exact a privilege tax. It is Appellee's contention that the decision of the Supreme Court of Michigan is correct and contains a complete statement of the facts, and because the record of this case has not as yet been printed we are reciting the pertinent portions of the decision as rendered by the Michigan Supreme Court in this case, and which will be found in the printed record of the case before the Michigan Supreme Court included with the transcript of record filed with this Court:

"This case involves appeals by the Detroit International Bridge Company, a Michigan corporation, with its principal office in the city of Detroit, from the determination of the Corporation Tax Appeal Board fixing its annual privilege fees for the years 1929 and 1930."

The purposes for which the bridge company was organized are:

> "To Construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto:
>
> To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The bridge is used for vehicular and pedestrian traffic across the Detroit river from Detroit to Canada. Permission and authority for its construction were granted to the Bridge Company by Act of Congress and to the Canadian Transit Company, which is now a subsidiary of the Bridge Company, by an Act of Parliament of the Dominion of Canada.

The applicable sections of Act No. 85, Pub. Acts 1921, as amended by Act No. 175, Pub. Acts 1929, requiring the payment of an annual privilege fee by corporations, appear in the margin. * * *

4. It is insisted that the Bridge Company is not subject to the payment of any annual privilege tax; that it is limited by its charter and dedication to public use, and is engaged exclusively in foreign commerce, and that the imposition of such a tax upon it violates Article 1, section 8, clause 3 of the Federal Constitution, which empowers the congress of the United States "To regulate Commerce with foreign nations."

> "We are impressed that in the discussion of this matter counsel lose sight of the nature of the privilege fee sought to be collected. It is not a tax upon the proceeds of the business of the corporation. It in no way involves the tolls collected from those using the bridge as a means of transportation between Detroit and Canada. It is a fee imposed by law "for the privilege of exercising its franchise and of transacting its business within this State." The distinction between such a fee and a tax upon property was clearly pointed out in Union Steam Pump Sales Co. v. State, 216 Mich. 261, and later in Re Truscon Steel Co., 246 Mich. 174, and in Re G. H. Hammond Co., 246 Mich. 179. The question presented is so clearly disposed of in Re Detroit & Windsor Ferry Co., 232 Mich. 574, that further discussion seems unnecessary.
>
> The cases relied on by counsel for the bridge com-

pany are, we think, easily distinguished. In Philadelphia and Southern Steamship Co. v. Pennsylvania, 122 U. S. 326, the tax was levied upon the gross receipts of a steamship company; in Covington, etc., Bridge Co. v. Kentucky, 154 U. S. 204, the State sought to regulate the rates of fare for passage over a bridge spanning the Ohio river. In Sault Ste. Marie v. Int'l Transit Co., 234 U. S. 333, the city sought to enforce the collection of a license fee, and in Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, and in State Tax Commission v. Interstate Natural Gas Company, Inc., —— U. S. —— (decided November 23, 1931), the State sought to enforce a statute providing for the collection of such a tax on corporations not organized under its laws and exclusively engaged in interstate commerce."

The decision of Michigan Tax Appeal Board was thus sustained and upheld by the Michigan Supreme Court.

THE QUESTION

The sole question is whether upon the facts presented to the Corporation Tax Appeal Board of Michigan, Act 85, Public Acts of 1921 as amended by Act 175, Public Acts of 1929 of the State of Michigan is constitutional in its application to the Detroit International Bridge Company. In other words has the State of Michigan a right to exact a privilege tax from the Appellant in this case?

ARGUMENT

THE FEDERAL QUESTION WAS DECIDED BY THE SUPREME COURT OF MICHIGAN ENTIRELY IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS COURT AND THERE IS NO REASON TO REVIEW ITS DECISION ON APPEAL

The Detroit International Bridge Company, Appellant, was organized under the laws of Michigan in 1927 and during the period subsequent to its organization and until October of 1929 was engaged in constructing an international highway bridge across the Detroit river to Canada. During this period it conceded its liability to the State of Michigan for its privilege taxes, and filed its reports and paid the fees in accordance with Act 85, Public Acts of 1921 of Michigan. In submitting its 1930 annual report Appellant claimed the right of exemption in the payment of its privilege tax due to its claimed exercise of purpose— that of carrying on foreign commerce. It stands undisputed, therefore, that it was formerly necessary for the Bridge Company to transact, in Michigan, business conceded to be intra-state; that its right to do business in the State of Michigan has never been revoked or surrendered. The Bridge Company is still holding its authority to do business in Michigan, and has held such authority during the entire period covered by the claim for privilege taxes.

It is apparent, therefore, that the State of Michigan is not attempting to tax the Bridge Company for business which it has transacted or is about to transact in Michigan. On the other hand it is attempting to tax the Bridge Company for the existence of a RIGHT TO DO BUSINESS in MICHIGAN which right the Appellant

has held during the period covered by the tax levied. Regarding the case in this light it is manifest that the suit presents no Federal question. If the State is attempting to tax only a RIGHT to do business alleged to have been granted then it is obvious that this suit involves but one inquiry, viz:

> Has the Bridge Company held, during the period covered by the tax levied, a RIGHT to do business in Michigan?

Since the tax is aimed at the EXISTENCE OF THE RIGHT rather than the EXERCISE OF THE RIGHT it is apparent that an adjudication of the tax does not properly involve any inquiry as to what kind of business the corporation may have been doing, whether foreign commerce or under a federal franchise, etc. Assuming that during the full period covered by the tax in question Appellant's sole activities have consisted of foreign commerce (which we deny) and operations under a federal franchise, the fact remains:

(First) That the Appellant, a Michigan corporation, has a RIGHT to do business in Michigan; and

(Second) That under the statutes of Michigan as construed by its highest Court the mere existence of such right to do intra-state business is the object against which such tax is aimed.

The fact that the amount of the tax exacted is computed on the basis of the value of property which might be used in foreign commerce does not inject a Federal question in the case. So long as the tax is aimed at the RIGHT to do business, it is immaterial that the amount of the tax is predicated on the value of the property which might be employed in foreign commerce within the State. Thus, quoting from Cooley on Taxation, 4th edition, Volume 1, Pages 852-3:

"An annual franchise tax based on the proportion of outstanding capital stock represented by property in the State is valid whether the corporation is a domestic or foreign one, notwithstanding the property is used in interstate or foreign commerce."

See: St. L. S. W. Ry. Co. v. Arkansas, 235 U. S. 351, 59 L. Ed. 265.
Ashley v. Ryan, 153 U. S. 436, 38 L. Ed. 773.

The same rule would, of course, apply in reference to the computation of the amount of a franchise tax on the basis of the value of intra-state property used in the operation of a federal franchise.

This Court in problems of this sort (as distinguished from problems where the tax is on gross receipts derived from interstate and foreign commerce) looks to the fact that a domestic corporation is a creature of the State, and being such a creature is subject to peculiar tax provisions of the State creating the same.

The position of the State of Michigan in its right to exact a privilege tax from Appellant is sustained by the cases, supra, and we quote from the following language of Mr. Justice White taken from Ashley v. Ryan:

"It follows from these principles that a state, in granting a corporate privilege to its own citizens, or, what is equivalent thereto, in permitting a foreign corporation to become one of the constituent elements of a consolidated corporation organized under its laws, may impose such conditions as it deems proper, and that the acceptance of the franchise in either case implies a submission to the conditions without which the franchise could not have been obtained.

"The question here is not the power of the state of Ohio to lay a charge on interstate commerce, or to prevent a foreign corporation from engaging in in-

terstate commerce within its confines, but simply the right of the state to determine upon what conditions its laws as to the consolidation of corporations may be availed of. Considering, as we do, that the payment of the charge was a condition imposed by the state of Ohio upon the taking of corporate being or the exercise of corporate franchises, the right to which depended solely on the will of that state, and hence that liability for the charge was entirely optional, we conclude that the exaction constituted no tax upon interstate commerce, or the right to carry on the same, or the instruments thereof."

Since the tax in this case is a tax on the RIGHT to do business as a corporation and since the amount of such tax may lawfully be computed on the value of property used in interstate business or foreign commerce or in the operation of a Federal franchise, it is apparent that the method employed by the State of Michigan in computing the amount of the tax in this case can not be questioned by the United States Court as being a burden upon interstate or foreign commerce or upon operation under a federal franchise.

The statute relied on by the Detroit International Bridge Company herein to sustain the Appellate jurisdiction of this Court i. e. Sec. 237 (B United States Judicial Code U. S. C. A. Title 28 Sec. 344) is not applicable to the case at bar for the reason no Federal question is involved. In support of this contention the Appellee cites the following cases:

Henderson Bridge Company v. Kentucky, 166 U. S. 150.

Kansas City F. S. & M. Ry. Co. v. Botkin, 240 U. S. 227, 60 L. Ed. 617.

Arkansas and Memphis Railway Bridge and Terminal Company v. State, 295 Southwestern 378 (Arkansas) 275 U. S. 548

(certiorari having been denied by the Supreme Court, 275 U. S. 548).
Nebraska Ex rel Beatrice Creamery Co. v. March, 282 U. S. 799.

We respectfully submit the Supreme Court of Michigan in upholding the constitutionality of the statute has decided clearly in accord with the decisions, supra, of this Court applicable to the Federal question involved, and the Appeal should be denied.

PAUL W. VOORHIES,
Attorney General of the State of Michigan.

ALICE E. ALEXANDER,
Counsel for Appellee.

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IN THE SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1932

No. 51

DETROIT INTERNATIONAL BRIDGE COMPANY,
Appellant,

vs.

CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN,
Appellee.

Appeal from the Supreme Court of the State of Michigan

BRIEF FOR THE CORPORATION TAX APPEAL BOARD, Appellee.

PAUL W. VOORHIES,
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Lansing, Mich.

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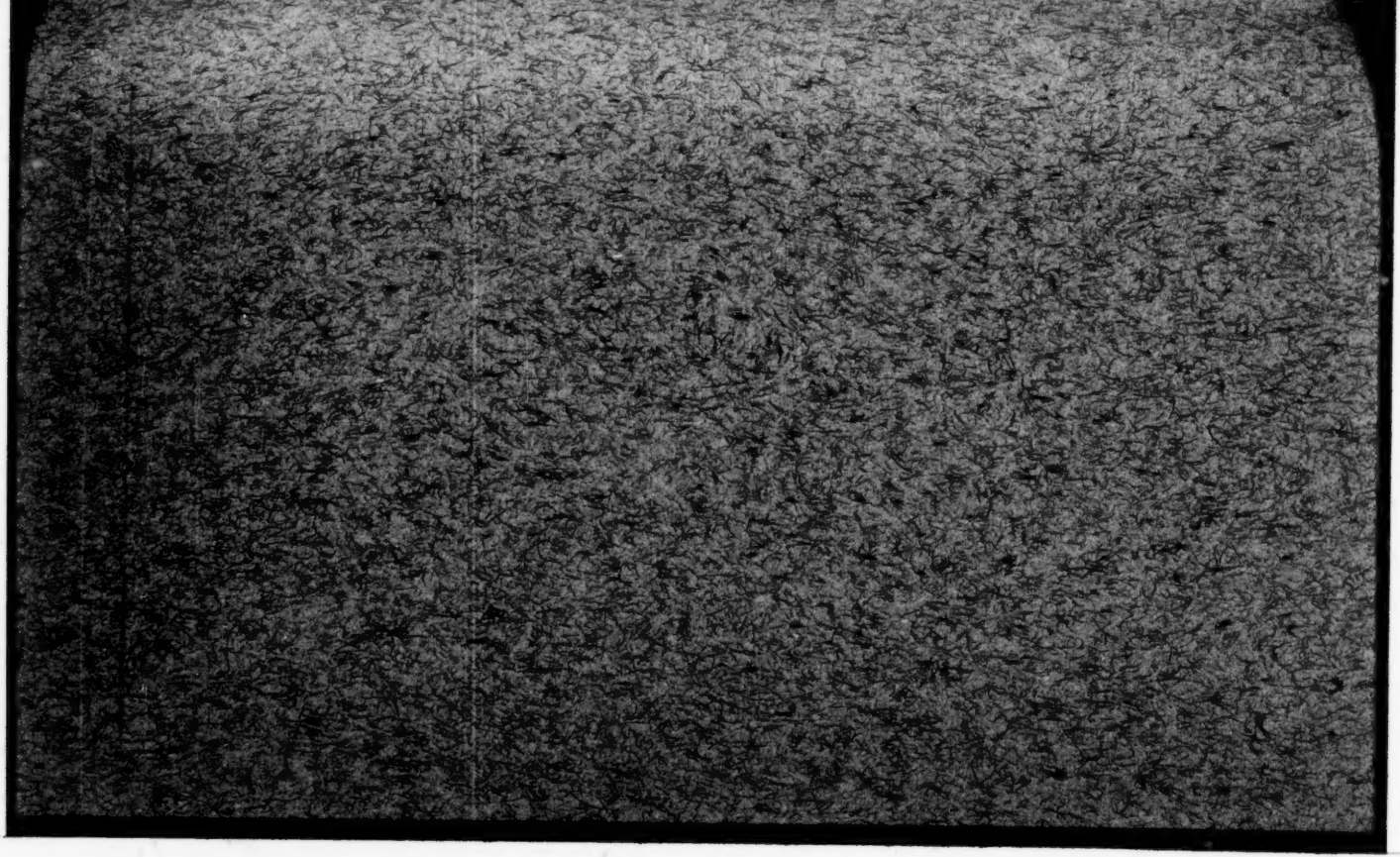

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1932

No. 51

DETROIT INTERNATIONAL BRIDGE COMPANY,
Appellant,

vs.

CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR APPELLEE. THE CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN

SUPPLEMENTAL STATEMENT OF FACTS

A statement of the case from Appellee is necessary on account of certain omissions in Appellant's statement having an important bearing upon the question which Appellant asks this court to review.

This case represents an attack upon the constitutionality of Michigan's so-called privilege tax law,—Act 85, Public Acts of 1921, as amended,—with reference to its application to the Detroit International Bridge Co. This corporation is here on appeal from the final judgment entered by the Supreme Court of the State of Michigan April 5, 1932 (R-64) upholding and sustaining the Corporation Tax Appeal Board in its determination of the privilege tax for said year in all points at issue—except one, not an issue in this case. In the decision rendered by the State Supreme Court, Act 85, Public Acts of 1921 as amended, was held valid in its application to Appellant.

The Bridge Company, a Michigan corporation was organized *June 21, 1927*, with primary purposes set forth in its charter:

ARTICLE III.

"Constructing, owning and/or operating a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada."

ARTICLE III. (as amended *Aug. 5, 1927*)

"To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto."

To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use.

IN FURTHERANCE AND NOT IN LIMITATION of the general powers conferred by the laws

of the State of Michigan and of the objects and purposes hereinbefore stated, it is hereby expressly provided that this corporation shall also have the following powers, that is to say:

To acquire by purchase, exchange, lease or otherwise, and to own, hold, erect, construct, operate, maintain, make, alter, enlarge and improve, and to aid or subscribe to the construction, acquisition or improvement of, convey, mortgage, sell, lease or otherwise dispose of, any and all real and personal property of every kind, corporeal and incorporeal, rights and privileges and any and all interests therein, necessary or incidental to or connected with any of the purposes of the corporation; and to perform any and all such acts either alone or jointly, or jointly and severally, with any other corporation or corporations, association or associations, domestic or foreign, or any firm or individual;

To take over the property, rights and privileges of any person, firm, association or corporation appropriate or required for the purposes of this corporation in whole or in part by purchase thereof or by acquisition of the capital stock of any such corporation or in any other manner; to pay for the same in cash or the stock, bonds, debentures, notes or obligations of this corporation or otherwise; to assume the whole or any part of the contracts, leases or other obligations of such corporation, or to take over such property subject to any such liabilities;

To purchase, redeem or otherwise acquire, and to hold, sell or otherwise dispose of, its own shares of stock (in so far as may be permitted by law) and its bonds, debentures, notes or other evidences of indebtedness;

To borrow money; either alone or jointly, or jointly and severally, with any other corporation or corporations, association or associations, domestic or foreign, or any firm or individual, to make, draw, accept, issue, endorse, negotiate and guarantee promissory notes, bills of exchange, bonds, debentures, warrants and other obligations and evidences

of indebtedness, whether secured, by mortgage, pledge or otherwise or unsecured, for money borrowed or in payment for property purchased or acquired or for any other lawful object; to mortgage or pledge any or all of its properties, rights, privileges and interests, including any shares of stock, bonds, debentures, notes or other obligations or evidences of indebtedness at any time owned or subject to disposition by it, and any such mortgage or pledge may be created by this corporation alone or jointly, or jointly and severally, with any other corporation or corporations, association or associations, domestic or foreign, or any firm or individual;

To acquire by purchase, subscription or otherwise, and to own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of shares of stock, bonds, debentures, notes, scrip, securities, obligations, evidences of indebtedness or contracts of any corporation or corporations, association or associations, domestic or foreign, or any firm or individual or the United States or the Dominion of Canada or any state, territory or Colony of the United States or any province of the Dominion of Canada or any other foreign country or any municipality or local authority within or without the United States or the Dominion of Canada, and also to issue in exchange therefor stocks, bonds, debentures, obligations or other evidences of indebtedness of this corporation, and while the owner or holder of any such shares of stock, bonds, debentures, notes, scrip, securities, obligations, evidences of indebtedness or contracts, to receive, collect and dispose of the dividends, interest and income thereon or therefrom, and to possess and exercise in respect thereto all of the rights, powers and privileges of ownership, including all voting powers thereon;

To guarantee the payment of dividends upon any capital stock, and to become surety in respect of, endorse or otherwise guarantee the principal or interest or both of any bonds, debentures, notes, scrip or other obligations or evidences of indebtedness, or the

performance of any contract, lease or obligation, of any corporation or corporations, association or associations, domestic or foreign, or any firm or individual, in which this corporation may have a lawful interest, or any shares of stock of which or any bonds, debentures, notes, obligations, evidences of indebtedness or contracts of which or whom are held by or for this corporation, or whenever such acts are calculated to promote the welfare of this corporation or to maintain, extend or enlarge its business or to protect its interests, in so far as and to the extent that such action may be permitted by law;

To aid in any manner any corporation or corporations, association or associations, domestic or foreign, or any firm or individual, any shares of which or any bonds, debentures, notes, obligations, evidences of indebtedness or contracts of which or of whom are held by or for or in any manner guaranteed by this corporation or in the welfare of which or of whom this corporation shall have any interest, and to do any acts, designed to protect, preserve, improve or enhance the value of any property at any time held by this corporation or in which it may at any time have an interest;

To do every other act or acts, thing or things incidental or appurtenant to or growing out of or connected with said purposes, objects and powers, provided the same be not inconsistent with the laws under which this corporation is organized.

This corporation may maintain, offices or agencies, conduct its business or any part thereof, purchase, lease or otherwise acquire, hold, mortgage, convey and assign real or personal property, and do all or any of the acts herein set forth, outside of the State of Michigan as well as within said State."

The Appellant's offices are located in Detroit, Wayne County, Michigan, and its business transacted within the State.

It owns the bridge structure up to the middle of the

Detroit River and by stock ownership in the Canadian Transit Company, owns and controls the other portion of the structure from Canada to the center of the river.

The Bridge Company has been using its franchise—the privilege of doing business in Michigan—from the date of its incorporation up to and including the present time. The bridge structure was completed in October of 1929 and from that time on, the bridge has been open for use by the public; the Appellant maintained the bridge and collected tolls for its use.

The privilege of exercising its purposes as enumerated in Article III of its amended charter hereinbefore recited, does not limit the Bridge Company to the operation of the Bridge—or as alleged by Appellant—to that of carrying on foreign commerce—.

Appellant acknowledged its liability as to filing of annual reports and payment of privilege taxes exacted under Section 4 of Act 85, of 1921, as amended, for the years 1927, 1928 and 1929 respectively, and paid such fees. It tendered its 1929 annual report accompanied by the minimum privilege tax of $10.00 claiming exemption of the value of the bridge structure due to its use in foreign commerce and in addition alleged several other exemptions which were disallowed by the Secretary of State. Appellant thereupon withdrew its claim as to exemption of the bridge property admitting the bridge was not completed at the time the tax accrued and the Company was not engaged during this period in carrying on commerce. The Appellant appealed on all other points at issue to the Corporation Tax Appeal Board which sustained the Secretary of State and overruled all contentions presented by Appellant.

The 1930 report was submitted together with fees in amount of $147.92, purporting to represent a $2.00 filing

fee and $145.92 privilege tax. Appellant set up the same claim for exemptions as were raised in the 1929 report but here it raised the constitutional question which is on appeal before this court. The Corporation Tax Appeal Board sustained the Secretary of State in the determination of the fee, disallowing all claims presented by Appellant. Appellant then appealed to the State Supreme Court and several issues were presented. The State Supreme Court rendered its decision, holding the Corporation Tax Appeal Board without error, except as to one minor question, not an issue in this case. Appellant promptly filed with the State Court an application for re-hearing alleging that the court had overlooked one important issue—that of excluding the value of the bridge structure which was used in foreign commerce. The Supreme Court denied the application for re-hearing. (Original R. 95)

This issue was vigorously argued both in Appellant's brief and in oral argument and the fact that the decision of the State Supreme Court overruled points raised by appellant with the exception of one minor issue was proof conclusive that the court had in mind and had passed upon all questions involved in the issue. (See Judgment R-64.)

With these exceptions, the facts presented by Appellant are accepted and those essential will be set out in the argument.

ISSUE.

Two questions seem to be involved in this issue:

1. Is the imposition of the privilege tax a violation of the Commerce Clause of the United States Constitution?

2. Is the Bridge Company engaged in foreign commerce?

MICHIGAN STATUTES INVOLVED.

The privilege fee here claimed was imposed by the State of Michigan in accordance with the provisions of Act 85, Public Acts of 1921, as amended by Act 175, Public Acts of 1929, and provides in part as follows:

> "Sec. 4. Every corporation organized or doing business under the laws of this state, excepting those hereinafter expressly exempted therefrom, shall, at the time of filing its annual report with the secretary of state of this state, as required by Section 7 hereof, *for the privilege of exercising its franchise and of transacting its business within this state,* pay to the secretary of state, an annual fee of two and one-half mills upon each dollar of its paid-up capital and surplus, but such privilege fee shall in no case be less than ten dollars nor more than fifty thousand dollars." (Act No. 233 P. A. 1923) (Italics are ours)

This same section amended by Act 175, Public Acts of 1929 reads as follows:

> "Sec. 4. * * * It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, *having the privilege of exercising corporate franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period.*" (Italics are ours)

Section 5, Chapter 2, Part V of Act 84, Public Acts of 1921, as amended, in ways not affecting the issue at bar, provides in part as follows:

"Sec. 5. Every corporation organized for pecuniary profit * * * excepting only railroad companies and interurban railroad companies, telephone and telegraph companies, express companies and foreign insurance companies, shall, annually in the month of July or August file a report in duplicate with the secretary of state showing its condition at the close of business upon the thirty-first day of December, or upon the date of the close of its fiscal year, next preceding, on suitable blanks to be furnished by the secretary of state as hereinafter provided: * * * Such report shall furnish the secretary of state with all information and facts necessary for the computation of the annual franchise fee provided by law. The secretary of state is hereby authorized to require of any corporation any additional information that may be needed after the filing of its annual report for the purpose of computing such fee. * * * Such reports shall be * * * deposited in the office of the secretary of state within the said month of July or August accompanied by a filing fee of two dollars, and the amount of the annual franchise fee provided by law." * * *

ARGUMENT.

I.

THE IMPOSITION OF THE PRIVILEGE TAX IS NOT A VIOLATION OF THE COMMERCE CLAUSE.

It is undisputed that Appellant is a Michigan corporation enjoying all the rights and privileges which the State conveys upon subjects of its creation.

The State exacts of a profit corporation, an annual tax for the privilege of exercising its franchises and transacting its business within the State. It is claimed by Appel-

lant that its business is confined exclusively to carrying on foreign commerce.

Counsel for Appellant state on page nine of their brief:

> "Upon the completion of the bridge in 1929 and continuously thereafter, the Detroit International Bridge Company, the Appellant, has through its own officers and employees, maintained and operated this bridge. Not having other corporate powers or purposes, the Appellant engaged in no other business whatsoever."

The Bridge Company admits without question therefore, that prior to 1929 it was not engaged in foreign commerce. It must be conceded it was exercising certain purposes enumerated in its charter before its alleged engagement in foreign commerce, therefore other powers and purposes must exist under its charter.

Referring to Article 3, it will be found not only has this Appellant a right to construct, own and operate a highway bridge, but also enjoys the privilege of carrying on the business of a real estate dealer and a broker in securities. Surely purposes of this nature may not be classified as foreign commerce business.

The Bridge Company in its payment of the 1927, 1928 and 1929 annual privilege tax conceded that it was doing an intra-state business. The right or franchise granted under Michigan law to engage in intra-state business has never been revoked or surrendered. The Bridge Company still holds its charter and *right* to do business in Michigan and has held such *right* during the entire period of the tax in question.

The nature of the privilege tax has been so repeatedly determined by our State Supreme Court and also by the United States Supreme Court in the recent decision of: People of the State of Michigan vs. Michigan Trust

Company, 52 Sup. Ct. 512, that it seems useless to add further argument of our own. We shall refer briefly to the holdings in a number of these cases:

Union Steam Pump Sales Company vs. Secretary of State, 216 Mich. 261, wherein the constitutionality of the so-called privilege tax law was attacked, the court had this to say:

> "That it is not a property tax, but is a tax on the franchise to do business as a corporation within the state".

The court in that case proceeded to point out the distinction between the two primary franchises "to be" which belongs to the incorporators, and the franchise "to do" which belongs to the corporation, and determined the privilege tax under consideration levied on the franchise "to do".

In re Detroit and Windsor Ferry Company, 232 Mich. 574, a case involving the identical questions as here presented, although the Ferry company admittedly was carrying on foreign commerce. The Court said:

> "The Ferry Company is a Michigan corporation, and its property is located in Michigan. Its principal business is foreign commerce. The tax imposed is a specific tax—an excise tax. (Union Steam Pump Sales Co. v. Secretary of State, 216 Mich. 261.) It is not a property tax. It in no way interferes with interstate or foreign commerce.
>
> The act makes reference to the capital and surplus and takes them into account in fixing the tax, but the reference is not for the purpose of taxing the property but to determine what is a fair price to charge for the franchise privileges."

And the Court proceeds to cite many cases in support of its holdings.

> "Maine v. Railway Co., 142 U. S. 217. Flint v. Stone Tracy Company, 220 U. S. 107. Kansas City, etc. R. Co. vs. Stiles, 242 U. S. 111. Hump Hairpin Manfg. Co. v. Emerson, 258 U. S. 290."

In the last cited case it was said by Mr. Justice Clarke:

> "While a State may not use its taxing power to regulate or burden interstate commerce (United States Express Co. v. Minnesota, 223 U. S. 335 (32 Sup. Ct. 211); International Paper Co. v. Massachusetts, 246 U. S. 135 (38 Sup. Ct. 292, Ann Cas. 1918C, 617), on the other hand it is settled that a State excise tax which affects such commerce, not directly, but only incidentally and remotely, may be entirely valid where it is clear that it is not imposed with the covert purpose or with the effect of defeating Federal constitutional rights. As coming within this latter description, taxes have been so repeatedly sustained where the proceeds of interstate commerce have been used as one of the elements in the process of determining the amount of a fund (not wholly derived from such commerce) to be assessed, that the principal of the cases so holding must be regarded as a settled exception to the general rule. Main v. Railway Co., 142 U. S. 217 (Sup. Ct. 121, 163); Wisconsin & Michigan R. Co. v. Powers, 191 U. S. 379 (24 Sup. Ct. 107); Flint v. Stone Tracy Co., 220 U. S. 107 (31 Sup. Ct. 342, Ann. Cas. 1912B 1312); United States Express Co. v. Minnesota, supra; Baltic Mining Co. v. Massachusetts, 231 U. S. 68 (34 Sup. Ct. 15); Kansas City, etc., R. Co. v. Stiles, 242 U. S. 111 (37 Sup. Ct. 58); United States Glue Co. v. Oak Creek, 247 U. S. 321, 326, 327 (38 Sup. Ct. 499, Ann. Cas. 1918E, 748). The turning point of these decisions is, whether in its incidence the tax affects interstate commerce so directly and immediately as to

> amount to a genuine and substantial regulation of, or restraint upon it, or whether it affects it only incidentally or remotely so that the tax is not in reality a burden, although in form it may touch and in fact distantly affect it."

And in conclusion, the court said:

> "The rule forbidding a tax on interstate commerce applies with equal force to foreign commerce, but this does not aid the company, for *the tax in question is not one upon interstate* or *foreign commerce*, but a privilege tax imposed as an incident to the right to be a corporation, and exercise corporate functions by means of paid-up capital and surplus. The rule is too well settled that a State may not impose a tax upon interstate or foreign commerce to require the citation of authority. It is equally well settled that the *privilege tax* here involved is *not one upon interstate or foreign commerce*. The yardstick employed to measure the privilege tax scales the charge for corporate privileges granted and not to measure mere receipts from interstate or foreign commerce."

In examining the language of Section 4, Act 85, Public Acts of 1921 as originally enacted (supra) it will be noted the privilege tax was exacted

> "for the privilege of exercising its franchise and of transacting its business within this State".

The decisions in the Union Steam Pump Sales Co. and in the Detroit Windsor Ferry Company represent an interpretation of the language in the original statute. At that time the Supreme Court held it was an *excise*, not a *property tax* and that it was exacted for the *privilege* of doing business. In 1929 the legislature enacted Act 175, P. A. 1929 as amendatory to Sec. 4, Act 85, P. A. of 1921,

which removes all doubt as to the nature of this privilege tax:

> (Act 175—1929) " * * * It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporate franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

Therefore it will be observed our Supreme Court has held consistently to the same theory as to the nature of this tax since its inception, merely that it is an *excise* not a *property tax* and that it is imposed for the *privilege* of exercising corporate franchises.

Following this enactment the Truscon Steel Corporation vs. State, 246 Mich. 175, was before the State Supreme Court and it was found necessary in disposing of the issue to again define the nature of the privilege tax and the court said:

> "That this tax is not a property tax but is an excise tax in which the property is used solely as a yardstick."

In G. H. Hammond Company, 246 Mich. 179, we have a case of a Michigan corporation doing no business at all in the State and yet held liable for the privilege tax because of its nature. It had the *privilege* of doing business and for this *privilege* the tax was exacted. In substance it was held that the tax was not dependent upon the activities of the corporation, but on the *right* which existed to exercise corporate functions.

In reviewing this case the Court in the following significant language said:

> "Michigan has seen fit to adopt legislation by which the annual privilege fee is imposed upon a corporation organized under its laws regardless of whether the corporation does any business within the State. There can be no question but that the State is possessed of the power to impose such a tax upon its domestic corporations."

See also Cobbs & Mitchell vs. Corporation Tax Appeal Board, 252 Michigan, 479.

> "The privilege fee is an excise tax, not upon the right 'to be' a corporation, but upon the activities of the corporation in the exercise of its corporate franchise, or, as it is sometimes expressed, upon the franchise 'to do' " (authorities cited).

In re Detroit Properties Corporation vs. State, 254 Mich. 525,

> "The privilege fee is an *excise* tax, * * * *Actual transaction* of business by a domestic corporation is *not* a *condition* of the *tax.* It is imposed on the *right* to transact, (Italics are ours)".

In a recent case before this Court, People of the State of Michigan vs. Michigan Trust Company, 52 Sup. Ct. 512, in which was involved a question of receivership's obligation to pay the privilege tax, the nature of the statute was thoroughly analyzed and after pointing out a variety of *constructions,* as placed upon laws of this nature, by various courts, this Court said:

"We are not required to choose from these diversities the construction that would appeal to us as the most consonant with reason if choice were wholly free. Choice, as it happens, is not free, for our task is to ascertain the meaning of a Michigan statute, and as to that the courts of the State, if they have spoken pronounce the final word. The decision of the Supreme Court of Michigan in re Detroit Properties Corporation, 254 Mich. 523, is a controlling adjudication as to the meaning and application of the privilege fee exacted of Michigan corporations. The court held that the tax was imposed upon the privilege to 'do'; that this privilege existed though nothing was ever done: * * The tax in controversy is a State tax, and is laid not on the doing of business but on the mere privilege to do it. The State decision as to its meaning would control in case of conflict, but conflict there is none."

In view of the construction placed upon Section 4, Act 85, Public Acts of 1921, as amended, by the State Supreme Court in the cases enumerated, as well as the very clarifying opinion given by this Court in the People of the State v. Michigan Trust Co. (supra), we feel at a loss to understand how Counsel for Appellant maintains this tax in question is based upon the *doing* of business by a corporation or has any relation to the business transacted.

In the court below Justice Sharpe in commenting upon the constitutional question involved has this to say: (R-57)

"We are impressed that in the discussion of this matter counsel lose sight of the nature of the privilege fee sought to be collected. It is not a tax upon the proceeds of the business of the corporation. It in no way involves the tolls collected from those using the bridge as a means of transportation between

> Detroit and Canada. It is a fee imposed by law 'for the privilege of exercising its franchise and of transacting its business within this State.' "

In view of these judicial pronouncements, authorities cited and the clarifying language of 175, Public Acts of 1929 as amendatory to Section 4 of Act 85 Public Acts of 1921, we believe it is useless to add further argument in support of this point. It is apparent that the State of Michigan is not in this case attempting to tax the Bridge Company for the business which it has transacted in Michigan or the business in which it may engage. On the other hand, it is attempting to tax the Bridge Company for the *existence of a right to do business in Michigan,* which right Appellant has held during the period covered by the tax levied. Regarding the case in this light it is manifest that *no federal question is presented.*

If the State is attempting to tax only a *right to do business* alleged to have been granted, then it is obvious that this case involves but one inquiry, viz: *Has the Bridge Company held, during the period covered by the tax exaction, a right to do business in Michigan?* Since the tax is aimed at the *existence* of the right, rather than at the *exercise* of the right, it is apparent then an adjudication of the tax does not properly involve any inquiry as to what *kind* of business the company has been doing, whether foreign commerce or under a federal franchise, etc. The fact remains that Appellant applied for and has held during the entire period a right to do intra-state business in Michigan, and then too, under the statutes of Michigan as construed by its highest court, the mere *existence* of such *right* to do intra-state business is the object against which the tax is aimed.

It will be admitted the construction of the Michigan

statute as announced by our Michigan Supreme Court in its decisions (supra) will not be challenged by this Court.

The fact that the *amount* of tax exacted is computed on the basis of the value of property which might be used in foreign commerce does not inject a federal question in this case. So long as the tax is aimed at the *right to do intra-State business* it is immaterial that the amount of the tax is predicated on the value of the property which might be employed in foreign commerce.

Cooley on Taxation, 4th Ed., Vol. 1, Page 852-3.

> "An annual franchise tax based on the proportion of outstanding capital stock represented by the property in the State is valid whether the corporation is a domestic or foreign one, notwithstanding the property is used in interstate or foreign commerce."

And see:

> St. L. S. W. Ry. Co. vs. Arkansas, 235 U. S. 351, 59 L. Ed. 265.

Since the tax in question is a tax on the *right* to do intra-state business and since the amount of such a tax may lawfully be computed on the value of property used in foreign commerce it is apparent the method employed by the State of Michigan in computing the amount of tax will not be questioned by the United States Courts as being a burden upon foreign commerce.

We contend the Detroit International Bridge Company, Appellant, in this case, is not engaged in foreign commerce, it transports neither persons nor freight

across the Detroit River and it cannot in any sense be construed a carrier.

On page 10 of Appellant's brief it is claimed the Michigan Supreme Court has treated the Bridge Company as being engaged in the business of foreign commerce. This we emphatically deny. The question of foreign commerce was an issue before the Supreme Court and exemption was claimed for its entire capital assets due to its claimed use in foreign commerce. This contention was disallowed by the Court as the judgment entered (R-64) will affirm.

Following the decision of the State Supreme Court, the Appellant immediately filed an application for rehearing stating the Court had overlooked this matter of exempting its property due to its use in foreign commerce. The Court denied this re-hearing, evidencing its position in regard to the stand on foreign commerce. There is no doubt, had the State Court considered the Bridge Company engaged in foreign commerce, it would have exempted the property used in the operation of such business in accordance with the provisions of Section 5, Act 85, Public Acts of 1921, as amended. Therefore the State Court rejected the theory advanced by Appellant—that it was engaged in foreign commerce.

Counsel for Appellant argue in its brief (page 9) that upon the completion of the bridge in 1929 and continuously thereafter Appellant has maintained and operated this bridge not having other corporate powers or purposes, and that it engaged in no other business whatsoever.

If Appellant had no corporate powers other than maintaining and operating a bridge which it concedes began in 1929, under what authority did the Bridge Company carry on its business prior to 1929?

However, this is beside the question. The Michigan privilege tax law is not concerned with the *activities* of the corporation, but merely with the *existence* of the *right* or *franchise* which it has conveyed to the corporation.

It is undisputed the Bridge Company is a profit corporation with an authorized capital of $5,000,000.00 preferred stock and 100,000 shares of non-par, with a total property value as enumerated in its annual report for 1930 (R-26) aggregating approximately sixteen millions of dollars ($16,000,000.00). The amount of tax exacted in connection with this report for the year of 1930 totaled $2,935.95. Obviously the tax in question is small in comparison to the capitalization and property valuations of Appellant.

It would see strange indeed, if corporations could organize under state laws and evade the tax burdens merely by furnishing an instrumentality capable of use in foreign commerce. It certainly would represent an unwarranted effort to promote a federal enterprise at the expense of the State Government.

See:

4 R. C. L. p. 560.

> "Where the charter of a Bridge Company confers upon it the franchise and powers of building, maintaining, and operating its bridge and approaches designated as its terminal facilities, such franchises and powers do not, in and of themselves, constitute the Bridge Company a common carrier of property; on the contrary they are appropriately confined to the erection, operation, and maintenance of a thoroughfare or public highway, open to the use of others, common carriers and private persons, upon making compensation therefor."

See:

12 C. J. p. 37.

"It is not an act of interstate commerce to build and rent a bridge for the purpose of interstate commerce."

Lust in The Digest of Decision of the Interstate Commerce Act Vol. 1, p. 213 states:

"Bridge companies; Construction of charters; Common carriers: Where the charter of a Bridge Company confers upon it the franchises and powers of building, maintaining and operating its bridge and approaches designated as its terminal facilities, such franchises and powers do not in and of themselves constitute the Bridge Company a common carrier of property. On the contrary they are appropriately confined to the erection, operation and maintenance of a thoroughfare or public highway open to the use of others, common carriers and private parties, upon making compensation therefore in the shape of reasonable tolls," and cites Kentucky and Indiana Bridge Company vs. Louisville and Nashville R. Co., 2 I. C. R. 351.

In Paragraph H on the same page it is further stated:

"Where the charter of a Bridge Company makes its bridge and approaches thereto such as it had authority to construct a public thoroughfare or highway for the use of which, by railroads or street cars, wagons, vehicles, animals, and foot passengers, it was authorized to charge 'reasonable tolls' * * * is strictly applicable to charges for the use of its highway rather than to compensation for transportation services which the Bridge Company may perform or be permitted to render."

The fact that the Bridge Company has dedicated itself to public use in exercising a power of eminent domain does not of itself constitute it a corporation engaged exclusively in foreign commerce. Neither does the fact it secured a federal franchise under an act of Congress for the right to construct the bridge, necessarily impose an obligation upon the corporation to engage in commerce. Appellant's federal franchise was a mere waiver of permissive right and constitutes no bar to the tax.

The jurisdiction of the Federal Government over bridges across navigable streams is based upon the Government's right to control navigation. While it may occasionally annex to one of its Congressional permits certain conditions dealing with tolls, etc., in order to insure fair dealing between applicant and the public, ordinarily the only condition annexed to such a permit is that the bridge be built according to plans approved by the government. Therefore, one of these bridge franchises, resembles a waiver of an objection more than it does an affirmative grant of a privilege.

It is apparent, exercising the power of eminent domain, and securing a federal permit for the construction of the bridge, in no way confines the business of Appellant to that of foreign commerce.

We contend the Bridge Company itself is not engaged in foreign commerce because it in no way assumes responsibility as to traffic over the bridge other than that of ordinary negligence. It takes no part in the transportation of either persons or goods over its structure and does not engage in commerce of any kind. It merely furnishes an instrumentality by means of which commerce may be carried on and exacts payment in way of tolls for the use of such property. If the Bridge Company furnished transportation for passengers and goods

over its structure, and actually carried out the purposes as carrier, we would have a different question, but such a question is not before us and therefore not an issue in this case.

Regardless of whether or not this Appellant is engaged in commerce, the privilege tax would still be valid under the Constitution, since the determination of the tax is confined to property located within the State.

See:

St. Louis and East St. Louis Railway Co. vs. State of Mo., 256 U. S. 314.
United States Express Co. vs. Minn., 223 U. S. 335.
Fargo vs. Hart, 193 U. S. 490, Postal Telegraph and Cable Co. vs. Charleston, 153 U. S. 692-700.

II.

THE BRIDGE COMPANY IS NOT ENGAGED IN FOREIGN COMMERCE.

(a) *The Bridge Company, an owner—not a carrier.*

We admit the State cannot impose a burden by taxation on foreign commerce.

But on the other hand, the State may impose a franchise tax upon a corporation's *right* to do business, even though the corporation whose franchise is taxed is engaged in foreign commerce, and exclusively used in that commerce.

See:

Maine vs. Grand Trunk Railway Co., 142 U. S. 217-227-228.
Wisconsin Michigan Railway Co. vs. Powers, 191 U. S. 379.
Baltic Mining Co. vs. Massachusetts, 231 U. S. 68.

The question in this case is not whether Act 85, Public Acts of 1921, as amended, is valid as being an attempt to burden foreign commerce, but the question before us is—is the State in this case trying to apply the tax to acts of foreign commerce?

The Bridge Company is engaged in no foreign commerce, it runs no trains, owns no rolling stock and is not in the transportation business. The bridge owns an instrumentality which carries or the public may use in foreign commerce, but the Bridge Company itself has never carried either freight or passengers across the Detroit River.

Counsel contend that when the Bridge Company as owner, is engaged in maintaining the bridge, it is engaged in foreign commerce. This position does not seem well considered and counsel has cited no case sustaining such position.

Let us assume an instance where a corporation was organized for the purpose of constructing railway coaches which it leased to a carrier. The corporation maintained such coaches over the period covered by the lease. The carrier would be engaged in commerce, the coaches would be engaged in commerce, but could it be contended that the owner and builder was exempt from the privilege tax for the reason that:

1. That it was engaged in interstate commerce or,
2. That it was engaged in the maintenance, ownership and operation of an instrumentality of such business.

Obviously such contention would be absurd; and yet the analogy of such situation to the facts of this case is readily apparent.

With the cases and authorities hereinbefore cited, we

refer to the following decisions of this court in support of our contentions:

The Henderson Bridge Company vs. Kentucky, 166 U. S. 150, is a leading case and is sufficiently analogous to be decisive of this case. The suit was against the Bridge Company having an interstate bridge across the Ohio River. The suit being for the purpose of collecting intangible property tax. It was contended (as in this case) that the tax was a burden on interstate commerce; that the Bridge Company was engaged in interstate commerce:

> "Clearly the tax was *not* a *tax* on the *interstate business* carried on over or by means of the bridge, because the *Bridge Company did not transact such business.* That business was carried on by the persons and corporation which paid the Bridge Company tolls for the privilege of using the bridge. The fact that the tax in question was to some extent affected by the amount of the tolls received and therefore might be supposed to increase the rate of tolls, is too remote and incidental to make it a tax on the business transacted. This very question was decided in New York, L. E. & W. R. Co. v. Pa., 158 U. S. 431, 439, where it was said: 'It is argued that the imposition of a tax on tolls might lead to increasing them in an effort to throw their burden on the carrying company. Such a result is merely conjectural, and, at all events, too remote and indirect to be an interference with interstate commerce. The interference with the commercial power must be direct, and not the mere incidental effect of the requirement of the usual proportional contribution to public maintenance' ". (Italics are ours)

While the last mentioned case did not involve precisely the same character of the tax as involved in this case, nevertheless the fact remains that the court was called

on in that case to decide whether an interstate Bridge Company is engaged in interstate commerce where it permits others to use the bridge upon paying for such privilege; and the court affirmatively declared that such Bridge Company was not so engaged. Counsel undertake to distinguish this case by pointing out that another character of tax was involved, but we fail to see where such distinction weakens the effect of such decision as an authority in this case. The court found it necessary, in determining liability, to answer the same abstract question which is presented in this case, viz; *Is the owner of this Interstate Bridge Company engaged in interstate commerce?* The court answers the question in the negative. We fail to see why such answer would be inapplicable to this case merely because of the variation of facts pointed out.

See the decision of the Kentucky Court of Appeals in this same Henderson case (31 S. W. 486) in which the court said:

> "This defendant company is not engaged in commerce or transportation at all. It has no authority or power or franchise to engage in commerce or transportation. It was simply authorized to build this bridge, and, when built, then the railroads that may be engaged in transportation, and so indirectly engaged in commerce, may transport merchandise and passengers over its structure, in consideration of reasonable rate of toll for so doing."

In Arkansas & Memphis Ry. Bridge & Terminals Co. vs. State, 174 Ark. 420-295 S. W. 378 (Certiorari having been denied by the Supreme Court, 275 U. S. 548). The facts in this case are almost identical to the case at bar

and should be controlling. In that case the State of Arkansas attempted to enforce its privilege tax against the Arkansas & Memphis Ry. Bridge & Terminals Co. for the privilege of doing business in the State. The Bridge Company was organized in Tennessee, but had been admitted to do business in Arkansas, therefore became subject to the imposition of the franchise tax.

Plaintiff contended its sole purpose was ownership and operation of an interstate bridge and therefore it was engaged exclusively in interstate commerce, and that the franchise tax imposed by the State was necessarily a tax upon interstate commerce. These conditions were denied by this court in refusing to entertain the writ of certiorari.

The distinction pointed out by Appellant in this Arkansas case,—that the Bridge Company did not operate the bridge, but leased the structure to others—is without force or effect. The fact that the owner of the property leased it to a carrier would be in the same category as the Detroit Bridge Company, owner, collecting tolls and rentals from individuals choosing to use the bridge. While it may be conceded there is a difference, it is without distinction.

Kansas City, Fort Scott & Memphis Railway Co. vs. Botkin, 240 U. S. 227. In that case the tax was an annual privilege tax on domestic corporations. It was measured by capital representing property used in interstate commerce whether within the State or without.

The Michigan privilege tax statute is fairer than the one in the cited case, because only property in Michigan is used in measuring the amount of privilege tax due. We believe this case is in point with the one at bar.

Appellant's attempt to distinguish this case by stating it was an annual privilege fee imposed upon the privilege of "being" or continuing "to be" a corporation rather than on the privilege of "doing" is absurd. It is a privilege tax in either case imposed by the State upon corporations of its creation. The franchise "to be" as pointed out in the Union Steam Pump Sales Case, 216 Mich. 261, is the initial franchise paid but once, upon the formation of the corporation, while the privilege tax is an annual fee exacted each year for the privilege of exercising corporate franchises whether the corporation chooses to exercise such franchises or not during any taxable period. See G. H. Hammond, 246 Mich. 179.

This court in reviewing the Kansas City case had this to say:

> "We take it to be simply a tax on the privilege of being a corporation—on the primary corporate franchise granted by the State. The authority of the State to tax this privilege, or franchise, has always been recognized and it is well settled that a tax of this sort is not necessarily rendered invalid because it is measured by capital stock which in part may represent property not subject to the State's taxing power."

And the court proceeds to cite authorities:

> "* * * It has never been, and cannot be, maintained that an annual tax upon this privilege is in itself, and in all cases, repugnant to the Federal power merely because it is measured by authorized or paid-up capital stock."

This court proceeded to point out not only the cases where the precedent for which we are maintaining has been upheld, but also the cases where the law of the

State attempted to tax the business itself or the privilege of doing such business, Philadelphia & Southern Steamship Company vs. Pennsylvania, supra, wherein it is said:

> "The tax was levied directly upon the receipts derived by the company from its fares and freights for the transportation of persons and goods between different States, and between States and foreign countries, and from the charter of its vessels which was for the same purpose. It was necessarily concluded that the tax was imposed upon interstate commerce."

The distinction which this court pointed out in this case applies with full force and effect to the case at bar. Michigan is not attempting to tax the business or the privilege of engaging in a stated kind of business, but rather is imposing an annual tax in this case upon a domestic corporation for the mere naked privilege of exercising corporate powers.

Ashley vs. Ryan, 153 U. S. 436.

Mr. Justice White in delivering the opinion for the court said:

> "The purpose of the tender of the articles of consolidation to the Secretary of State was to secure to the consolidated company certain powers, immunities, and privileges which appertain to a corporation under the laws of Ohio. The rights thus sought could only be acquired by the grant of the State of Ohio, and depended for their existence upon the provisions of its laws. Without that State's consent they could not have been procured. Revised Statutes of Ohio, sections 3239, 3382 and 3384 b, amended

by act of April 11, 1890, 87 Ohio Laws, 183, 184. Hence, in seeking to file its articles of incorporation, the company was applying for privileges, immunities, and powers which it could by no means possess, save by the grace and favor of the constitution of the State of Ohio and the statutory provisions passed in accordance therewith. At the time the articles were presented for filing, the statute law of the State charged the parties with notice that the benefits which it was sought to procure could not be obtained without payment of the sum which the Secretary of State exacted. As it was within the discretion of the State to withhold or grant the privilege of exercising corporate existence, it was, as a necessary resultant, also within its powers to impose whatever conditions it might deem fit as prerequisite to corporate life. The act of filing, constituting, as it did, a claim of a right to the franchise granted by the state law, carried with it a voluntary assumption of any burden with which the privilege was accompanied, and without which the right of corporate existence could not have been procured. * * * Considering, as we do, that the payment of the charge was a condition imposed by the State of Ohio upon the taking of corporate being or the exercise of corporate franchises, the right to which depended solely on the will of that State, and hence that liability for the charge was entirely optional, we conclude that the exaction constituted no tax upon interstate commerce, or the right to carry on the same, or the instruments thereof, and that its enforcement involved no attempt on the part of the State to extend its taxing power beyond its territorial limits."

Michigan's annual privilege tax was contained in the statutes when the Bridge Company was incorporated. Under the reasoning in the Ashley Case the Bridge Company accepted the annual fee provision as a part of its obligation to the State creating it.

While we have found no case holding that the mere

owning and maintaining of a bridge by a corporation constitutes commerce, yet we have found cases showing that it is not so engaged.

Kentucky & Indiana Bridge Co. vs. L. & N. Ry. Co., 2 Int. Com. Rep., Page 351, same being the decision of a United States Circuit Court sitting in Kentucky in which the court held:

> "The franchises and powers conferred upon petitioner of building, maintaining and operating its bridge and approaches, designated as its terminal facilities, do not in and of themselves constitute it a common carrier of property; on the contrary, they are appropriately confined to the erection and maintenance of a thoroughfare or public highway open to the use of others, common carriers and private parties upon making compensation therefor in the shape of 'reasonable tolls.'
>
> The powers and franchises conferred upon petitioner find their legitimate scope and operation in the building, operating and maintaining of its bridge and approaches thereto for the public purposes it was intended to subserve: That of furnishing and forming a highway over which common carriers and others should have the right or privilege of transporting goods, or passing as they pass over a turnpike, a canal, a ferry, upon paying reasonable tolls for the use of the structure or thoroughfare—*and do not in any way constitute petitioner a common carrier of goods* authorized to equip its road or to charge compensation for transporting goods on or over the same". (Our Italics).

In Keokuk & Hamilton Bridge Co. vs. Illinois, 44 Law E. 299, virtually the same state of facts was presented as in the Henderson Case. The court was called upon to decide whether it would impose a capital stock tax on a Bridge Company owning an interstate bridge. The defense of interstate commerce was raised. The court said "Nor was the tax a tax on interstate commerce", and quoted from the Henderson decision, supra.

CASES CITED BY APPELLANT DISTINGUISHED.

Covington & Cincinnati Bridge Co. vs. Commonwealth, 38 Law Ed. 966, is not in conflict with the other cases cited by us. In the Covington Case, the State of Kentucky attempted to *regulate interstate bridge tolls.* It involved entirely a different issue than is presented in this case. The court, of course, denied the right of a State to regulate interstate tolls. It is interesting to note, however, that the court, while holding an interstate bridge to be a highway for interstate commerce, remarked:

> *"* * * The Bridge Company is not itself a common carrier."*

See p. 969, 38 Law Ed.

In Pederson vs. Delaware, Lackawanna & Western Rd. Co. 229 U. S. 146. This case involves the right of recovery under Employer's Liability Act. An employee of the railroad company engaged in carrying bolts to be

used in the repair of a bridge was injured. The court held as an employee of the railroad company he was engaged in interstate commerce, but note this: *the employee was working for the railroad company, and was not working for an owner Bridge Company.*

We have found several cases holding that employees of carrier railroad companies, while engaged in repairing bridges, were engaged in interstate commerce; but we have found absolutely no case where an employee of a lessor or owner Bridge Company was held to be so engaged.

Philadelphia, Baltimore & Washington Railroad Company vs. Smith 250 U. S. 101. In this case it was held that a cook in a camp car on a siding near a railroad bridge (which bridge was being repaired) was engaged in interstate commerce. *But again as in the previous case the cook was working for the railroad company.*

The judicial decision that an *employee* of a *common carrier* is engaged in interstate commerce is no authority for a claim that an owner *Bridge Company* is engaged in interstate commerce.

Kinzel vs. Chicago, Milwaukee & St. Paul Ry. Co., 250 U. S. 130. This case comes under the Employer's Liability Act wherein an employee in charge of certain cars was injured. It was admitted the company was engaged in interstate commerce. The court held the employee was engaged in interstate commerce within the meaning of the act.

State vs. Bates & Rogers Construction Co., 19 Wash. 183-157, Pac. 483. The same point is involved. A contractor employed by the railroad company was injured in the repair of the bridge and the court held the employment was in the nature of interstate commerce.

We see no possible connection between cases of this nature and the one at bar. The Bridge Company is not engaged in commerce of any kind.

Glouster Ferry Co. vs. Pennsylvania, 114 U. S. 196: City of Sault Ste. Marie vs. International Transit Co., 234 U. S., 333: Mayor of Vadalia vs. McNeeley, 274 U. S. 676. These cases are readily distinguishable. Pennsylvania assessed a tax against a New Jersey corporation doing a purely interstate business. Admittedly this was an interference of interstate commerce and the court so held.

In the City of Sault Ste. Marie case a license tax is involved. This tax was exacted from everyone, whether corporation, partnership or individual before it could engage in the carrying of passengers between the American and Canadian shores. The license, it will be seen, applied directly to the business of carrying passengers. It regulated a matter which was subject to the exclusive control of Congress and was consequently unconstitutional.

The same is true of the Mayor of Vadalia Case, vs. McNeely, 274 U. S. 676, involving a license for operating a public ferry across the Mississippi River and carrying passengers. The question presented was whether or not the town could make its consent and license a condition precedent to the right to engage in transportation of passengers by means of ferry and it was held this it may

not do. The withholding of the license would necessarily prevent the owner of the ferry from transporting passengers and there would be a direct interference of the regulation of authority belonging to Congress.

Inasmuch as the *Appellant* is not engaging in carrying on transporting none of these cases are in point.

Ozark Pipe Line Corporation vs. Monier, the State Tax Commission of Missouri, 266 U. S. 555, Eureka Pipe Line Company vs. Hallanan, 257 U. S. 265; United Fuel & Gas Co., vs. Hallanan, 257 U. S. 277.

In the above cases Appellants were admittedly engaged in interstate commerce. Any tax levied against the carrier pipe line company on oil transported would necessarily be a tax upon the commerce. These cases cited would be more in point to the Bridge Company, had Appellant found a case where the producing company was held liable for the State tax rather than the pipe line company, actually engaged in commerce.

Appellant cites Philadelphia & Southern Steamship Company vs. Pennsylvania, 122 U. S. 326. In this case the Supreme Court held void a tax levied upon the gross receipts of a steamship company engaged in the transportation of passengers and freight—a common carrier. Again we have a direct interference with commerce in violation of the commerce clause. It is not in point with the case at bar.

It will be observed all cases cited and relied on by Appellant in support of its contentions represent corporations actually engaged in interstate commerce and the tax as levied in each case is directly upon the gross receipts of the corporation or the business transacted by the corporation, either of which constitute an interference with the power delegated to Congress. These cases are not controlling or even in point with the case at bar.

Since the tax in this case is a tax on the *right* to do intra-state business and since the amount of the tax may lawfully be computed on the value of the property used in foreign commerce, it is obvious that the method employed by the State of Michigan cannot be questioned by this court as being a burden upon foreign commerce or in violation of Article I, Section 8 of the Constitution of the United States (Commerce Clause).

In support of our position we cite the following cases which we contend are controlling in the issue before this court:

Henderson Bridge Company vs. Kentucky, 166 U. S. 150.
Ashley vs. Ryan, 153 U. S. 436.
Kansas City Ry. vs. Botkin, 240 U. S. 227.
Maine vs. Grand Trunk Ry. Co., 142 U. S. 217.
Flint vs. Stone Tracy Co., 220 U. S. 107.
Kansas City M. & B. R. R. Co., vs. Stiles, 242 U. S. 111.
Hump Hairpin Co., vs. Emerson, 258 U. S. 290.

which represent the uniform holding of this court.

CONCLUSION.

We summarize our reply to Appellant's assignments of errors as follows:

First:—The privilege tax assessed against this corporation is for the privilege of doing business and is not in violation of the Commerce Clause.

Second:—This corporation is not engaged in foreign commerce.

Third:—The property of plaintiff is not used by Appellant in foreign commerce, and therefore should enter into the computation of the privilege tax.

We therefore submit the judgment entered by the Michigan State Supreme Court should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 51.—October Term, 1932.

Detroit International Bridge Company, Appellant, *vs.* Corporation Tax Appeal Board of the State of Michigan.	Appeal from the Supreme Court of the State of Michigan.

[December 5, 1932.]

Mr. Justice Butler delivered the opinion of the Court.

Appellant is a Michigan corporation engaged in operating the international bridge spanning the river between Detroit and Sandwich, Ontario. Acting under Act No. 85 of 1921, as amended by Act No. 175 of 1929, the secretary of state calculated, and appellee confirmed his determinations, that appellant was liable for a license fee tax of $3,000 for 1929 and $2,935.95 for 1930. Appellant obtained a review in the state supreme court and there maintained, as it still insists, that by its articles of association its powers are limited to constructing, owning, maintaining and operating the bridge for the use of traffic and to taking tolls therefor, that in 1930 it was engaged exclusively in foreign commerce and that the statute, construed to impose a fee for the privilege of doing that business, violates the commerce clause. The bridge was under construction during a part of 1929, and no question is here presented as to the fee for that year. The court overruled appellant's contention and, except as to an item not now material, entered judgment affirming the determination of the fees. — Mich. —.

The sole question is whether as construed the state law violates the commerce clause.

The statute, § 4, declares that every corporation, excepting certain companies that need not be named, organized under the laws of the State "shall . . . for the privilege of exercising its franchise and of transacting its business within this state, pay to

the secretary of state an annual fee of two and one-half mills upon each dollar of its paid-up capital and surplus, but such privilege fee shall in no case be less than ten dollars nor more than fifty thousand dollars. It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporate franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

In *In re Detroit Properties Corp.*, (1931) 254 Mich. 523, the state supreme court held (p. 525): "The privilege fee is an excise tax, not upon the right to be a corporation, but upon the activities of the corporation in the exercise of its corporate franchise, or, as it is sometimes expressed, upon the franchise 'to do', not upon the franchise 'to be'. . . . Actual transaction of business by a domestic corporation is not a condition of the tax. It is imposed on the right to transact." And this court follows that construction. *Michigan* v. *Michigan Trust Co.*, 286 U. S. 334, 342.

Appellee insists that to own and operate the bridge and take tolls for its use does not involve intercourse between Michigan and Ontario and that therefore appellant is not engaged in foreign commerce and further maintains that appellant has power to engage in business other than the operation of the bridge. We do not consider whether appellant is engaged in foreign commerce for we are of opinion that it has failed to establish that it has no power to carry on any business that is not within the protection of the commerce clause. *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 448.

Appellant has the burden to establish the facts on which it asserts the invalidity of the statute. *Weaver* v. *Palmer Bros. Co.*, 270 U. S. 402, 410. The record contains only a part of the third article of its articles of association: "The purpose or purposes of this corporation are as follows: To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto; To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

Appellant asserts that its powers are solely limited to these purposes. But appellee in its brief brings forward the entire article, containing in its final paragraph a specification of power that is not limited, incident or appurtenant to the authority to construct, maintain and operate the bridge: "This corporation may maintain offices or agencies, conduct its business or any part thereof, purchase, lease or otherwise acquire, hold, mortgage, convey and assign real or personal property, and do all or any of the acts herein set forth, outside of the State of Michigan as well as within said State." It is clear that in addition to general power to own and operate the bridge and to do all that is related to that enterprise, appellant is by the last quoted provision empowered, as contended by appellee, to carry on the business of buying and selling real and personal property within the State of Michigan and elsewhere.

Indeed, appellant did not at first claim that its powers and activities are limited to foreign commerce. On the contrary it sent to the secretary of state with its annual report of 1929 the prescribed minimum fee of $10 and with that of 1930 the sum of $145.92. It did not then construe the Act as not applicable to any business within the scope of its authorization under its articles and the laws of the State, but merely that it was not liable for as much as the state taxing authorities laid against it.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.